

F B I

Date: 8/4/76

Transmit the following in \_\_\_\_\_  
(Type in plaintext or code)Via AIRTEL AIRMAIL  
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Assoc. Dir.	_____
Dep.-A.D.-Adm.	_____
Dep.-A.D.-Inv.	_____
Asst. Dir.:	_____
Adm. Serv.	_____
Ext. Affairs	_____
Fin. & Pers.	_____
Gen. Inv.	_____
Ident.	_____
Inspection	_____
Intell.	_____
Laboratory	_____
Legal Coun.	_____
Plan. & Eval.	_____
Rec. Mgmt.	_____
Spec. Inv.	_____
Training	_____
Telephone Rm.	_____
Director Sec'y	_____

TO: DIRECTOR, FBI  
(ATTN: LEGAL COUNSEL DIVISION)

FROM: SAC, LOUISVILLE (92-281B)

SUBJECT: DAVID DELLINGER, et al., v.  
JOHN N. MITCHELL, et al  
(U.S.D.C., D.C.)  
CIVIL ACTION FILE NO. 1768-69

Re Bureau airtel to Louisville, New Orleans and  
New York, dated 7/29/76.

Enclosed herewith for the Bureau is the original  
and ten (10) copies of notarized affidavit subscribed and  
sworn by SA EDMUND V. ARMENTO on 8/4/76 at Louisville,  
Kentucky, reflecting negative search of ELSUR indices concern-  
ing the Southern Conference Educational Fund (SCEF) (LS 100-197),  
3210 West Broadway, Louisville, Kentucky, telephone numbers  
502/778-3348 and 502/778-3349, and 3208 West Broadway,  
Louisville, Kentucky (1969-1974).

- ② - Bureau (Enc. 11) (RM) **ENCLOSURE**  
2 - Louisville  
(1-92-281B)  
(1-100-6375)

EVA/scs  
(4)

EX-108

REC-33

62-112989-351

23 SEP 20 1976

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED

DATE 6/21/80 BY SP-2 TAP/103

2/9/93

10/10/80

3/5/80

Approved

Sent

M

Per

Special Agent in Charge

U.S. Government Printing Office: 1972 - 455-574

4 SEP 29 1976

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al., )

Plaintiffs, )

v. )

JOHN N. MITCHELL, et al., )

Defendants. )

Civil Action No. 1768-69

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED 315820  
DATE 2-9-93 BY 10480 KMB

County of Jefferson )

State of Kentucky )

ss

AFFIDAVIT

I, Edmund V. Armento, after having been duly sworn,  
do hereby depose and state the following:

I am a Special Agent of the Federal Bureau of Investigation  
(FBI) and am currently assigned to the Louisville, Kentucky Field  
Office of the FBI.

On August 4, 1976, I made a careful and diligent search  
of the electronic surveillance indices maintained at the Louisville,  
Kentucky Field Office of the FBI, which include the following:

- (1) Index cards indicating the name of subjects  
of electronic surveillances and the date or dates  
such surveillances were maintained;
- (2) Index cards indicating the names of persons  
who while not subjects of a surveillance, were  
incidentally overheard on surveillance of another  
and the date or dates of such overhears.

Based upon my search. I determined that these indices

2. 3208 West Broadway  
Louisville, Kentucky 40211  
(1969 to 1974)

The foregoing indices constitute a comprehensive index of all electronic surveillances conducted by the Louisville, Kentucky Field Office of the FBI. If the Southern Conference Educational Fund had been the subject of an electronic surveillance conducted by this Agency in Louisville, Kentucky, at the addresses and telephone numbers listed or at any address within the jurisdiction of the Louisville, Kentucky Field Office, the name of that organization would have been contained in the indices.

/s/ Edmund V. Armento  
\_\_\_\_\_  
Special Agent  
Federal Bureau of Investigation  
Louisville, Kentucky

Subscribed and sworn to before me this 4th day of August, 1976.

/s/ Carl E. Ross  
\_\_\_\_\_  
Notary Public

My Commission expires My Commission expires Feb. 27, 1978

# memorandum

145-11-71 &

a1... 145-0-12-3205

AUG 1 1977

DATE: Ms. Barbara Allen Babcock  
Assistant Attorney General  
TO: Civil Division FEDERAL GOVERNMENT  
FROM: David Dellinger, et al. v. John N. Mitchell  
SUBJECT: (U.S.D.C. D.C.) C.A. No. 1768-69;  
Black Panther Party, et al. v. Edward R. Brooke  
(U.S.D.C. D.C.) C.A. No. 76-2205  
TO: Mr. Clarence M. Kelley  
Director  
Federal Bureau of Investigation  
Attention: Legal Counsel Division

Please find enclosed a copy of the protective Order entered in the Dellinger case on February 26, 1974. Although the Order does not specifically prohibit the Bureau from releasing documents involved in the Dellinger case, we have, since its entry, not released documents without first seeking the approval of the Court by way of motion to modify the protective Order.

It has recently come to our attention that 14 documents concerning the Bureau's electronic surveillance of the Black Panther Party in New Haven, Connecticut were released to the press, pursuant to the Freedom of Information Act, 5 U.S.C. §552, on April 20, 1977. Those documents are covered by the Dellinger protective Order.

In view of the enclosed protective Order and the recent filing of Black Panther Party v. Levi, challenging, inter alia, the Bureau's investigation of the Black Panther Party, we would appreciate your coordinating any further releases of materials involving the Party under the Freedom of Information Act with this office.

**Enclosure**

FBI Information  
 ALL INFORMATION CONTAINED  
 HEREIN IS UNCLASSIFIED  
 DATE 9-9-83 BY 1048 Dtm/lsc  
 315820



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EX-130

REC-63

62-112989-

35/ Please advise  
current status

ENCLOSURE

XEROX

DEC 13 1977

20 DEC 13 1977

LEGAL COUNSEL

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b7C

7 DEC 19 1977 Buy U

**Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan**

OPTIONAL FORM NO. 10  
(REV. 7-76)  
GSA FPMR (41 CFR) 101-11.6  
5010-112





IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al.,

Plaintiffs,

v.

JOHN N. MITCHELL, et al.,

Defendants.

CIVIL ACTION NO. 1768-69

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 1-5-82 BY SP5 JIA/JP

MOTION TO POSTPONE PRETRIAL CONFERENCE

The defendants, through their undersigned counsel and pursuant to Rule 6(b), Federal Rules of Civil Procedure, hereby move for an Order postponing the Pretrial Conference now scheduled for February 5, 1979.

In support of this motion, the defendants state the following:

On November 14, 1979, this Court entered an Order which, inter alia, required the completion of discovery by January 31, 1979 and referred this case to the Magistrate for Pretrial immediately thereafter. Pursuant to that Order, Magistrate Lawrence S. Margolis entered an Order on November 27, 1978, setting a Pretrial Conference for February 5, 1979.

In accordance with the November 14 Order, defendants noticed the depositions of the individual plaintiffs for January 15-23, 1979. After the denial of their motion to postpone those depositions, the plaintiffs chose to ignore the Court's Orders and to decline to attend the

depositions as scheduled. Defendants have, therefore, moved

for the imposition of sanctions, seeking the dismissal of

the claims of the plaintiffs remaining in this case because

NOT RECORDED

2 JAN 25 1979


Thus, in its present posture, this case is not ready for a pretrial conference. Discovery has not been completed and the case may be dismissed without the necessity for a trial. The plaintiffs, through counsel, agree that the Pretrial Conference should be postponed.


For these reasons, the Pretrial Conference scheduled for February 5, 1979, should be postponed.

Respectfully submitted,

BARBARA ALLEN BABCOCK  
Assistant Attorney General

EARL J. SILBERT  
United States Attorney

  
JOHN J. FARLEY, III  
Assistant Director

  
JONATHAN B. SMITH  
Trial Attorney

Torts Branch, Civil Division  
Department of Justice  
Washington, D.C. 20530  
Telephone: (202) 724-6746

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al.,

Plaintiffs,

v.

JOHN N. MITCHELL, et al.,

Defendants.

CIVIL ACTION NO. 1768-69

ORDER

Upon consideration of the defendants' motion to postpone the Pretrial Conference in this case and the record in this case, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 1979,

ORDERED that defendants' motion should be, and it hereby is, granted; and it is further

ORDERED that the Pretrial Conference scheduled for February 5, 1979, is postponed pending further Order of this Court.

UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, I served a copy of the foregoing Motion To Postpone Pretrial Conference upon the plaintiffs by serving a copy thereof by mail, postage prepaid, upon the following counsel of record:

• Morton Stavis, Esquire  
744 Broad Street  
Newark, New Jersey 17102

Rhonda Copelon, Esquire  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003

Arthur Kinoy, Esquire  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003

Jack D. Novik, Esquire  
American Civil Liberties Union Foundation  
22 E. 40th Street  
New York, New York 10016

Hayward C. Reed, Esquire  
1776 K Street, N.W.  
Room 607  
Washington, D.C. 20006

Date: January 19, 1978

Jonathan B Smith  
JONATHAN B. SMITH  
Attorney, Department of Justice

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

9 DAVID DELLINGER, et al.,

Plaintiffs,

v.

JOHN N. MITCHELL, et al.,

Defendants.

CIVIL ACTION NO. 1768-69

MOTION FOR A PROTECTIVE ORDER

The defendants, through their undersigned counsel and pursuant to Rule 26(c) and (d), Federal Rules of Civil Procedures, hereby move this Court to enter a protective Order providing that the Document Requests and Cross-interrogatories, served by Plaintiff Black Panther Party on September 19, 1978, shall not be responded to by defendants, pending a decision of defendants' motion to compel answers to interrogatories.

A memorandum of points and authorities and a proposed Order are submitted in support of this motion.

Respectfully submitted,

BARBARA ALLEN BABCOCK  
Assistant Attorney General

*John J. Farley, III*  
JOHN J. FARLEY, III

*Jonathan B. Smith*  
JONATHAN B. SMITH

Attorneys, Department of Justice  
521 12th Street, N.W.  
Washington, D.C. 20530  
Tel: (202) 724-6746

Attorneys for Defendants

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 1-5-82 BY [signature]

ICC for Rm 7338

3 ENCLOSURE

62-112989-  
NOT RECORDED  
12 OCT 25 1978

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
JOHN N. MITCHELL, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

CIVIL ACTION NO. 1768-69

MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION FOR A PROTECTIVE  
ORDER

[This Memorandum is filed under seal  
pursuant to the protective Order  
entered on February 26, 1978.]

*For Information*  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 3/10/92 BY 10180 DM/RO  
315820

On April 6, 1978, defendants filed a second set of interrogatories and document requests upon the Black Panther Party (BPP). Those interrogatories and document requests generally seek information concerning certain activities of the BPP which caused the defendants to take the actions challenged in this case. Following the plaintiffs' filing of blanket objections, the defendants moved to compel answers to those interrogatories and document requests. The plaintiffs filed the interrogatories at issue when they opposed that motion. They seek the same information sought from the BPP by the defendants in the second set of interrogatories, insofar as that information is reflected in the files of the defendants; indeed, plaintiffs' interrogatories are all but verbatim submissions of defendants' interrogatories to plaintiffs.

The defendants, by this motion, request the entry of a protective Order requiring that the discovery now sought by the plaintiffs not be had until the BPP answers such interrogatories as the Court orders it to answer in ruling upon the defendants' motion to compel. The defendants have

heretofore produced certain of the information sought by the plaintiffs. They have, for example, made available over 100 memoranda by which defendant Mitchell authorized electronic surveillance of the BPP and the FBI forms by which field offices justified their requests for authorization to install or maintain the surveillances.<sup>\*/</sup> Those documents contain many of the facts available to Mitchell, which he relied upon in authorizing surveillances and which the defendants are attempting to elicit from the plaintiffs by their motion to compel. Plaintiff could thus amass certain of the information they presently seek by perusing the materials already available to them.

Moreover, the filing of the instant interrogatories by the plaintiffs is a maneuver on their part designed to direct the Court's attention to the position they have adopted in opposing defendants' motion to compel them to produce information not presently available to the defendants. It may also be an attempt on their part to seek information from the defendants to be used if and when they are compelled to answer the interrogatories served by the defendants. The defendants efforts to elicit relevant information from the plaintiffs should not be frustrated, or delayed, by their having to answer their own interrogatories before the plaintiffs are required to respond. To allow the plaintiffs

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<sup>\*/</sup> It should be noted that the FBI is not a defendant in this case, and that Mitchell does not have custody, control or possession of its files - indeed he has no access to those files at the present. Thus,

to request the defendants to answer their own discovery would be to condone and encourage their filing of blanket objections to all discovery sought by the defendants and to make discovery a "one way street," a result which the Supreme Court refused to sanction in Hickman v. Taylor, 329 U.S. 495, 507(1947).

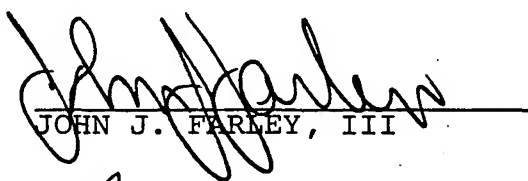
Defendants are aware that rule 26(d), Federal Rules of Civil Procedure, provides that discovery may be had by both parties simultaneously - that one party does not gain priority in discovery merely by seeking discovery before the other party does so. That rule also provides, however, that the Court in its discretion may establish sequences and methods of discovery for the convenience of the parties and in the interest of justice. The interests of justice in this case demand that the plaintiffs respond to discovery served by the defendants prior to requesting the defendants to answer their own interrogatories.

CONCLUSION

For these reasons, the defendant's motion for a protective Order should be granted.

Respectfully submitted,

BARBARA ALLEN BABCOCK  
Assistant Attorney General

  
JOHN J. FARLEY, III

  
JONATHAN B. SMITH

Attorneys, Department of Justice  
521 12th Street, N.W.  
Washington, D.C. 20530  
Tel: (202) 724-6746



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
JOHN N. MITCHELL, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

Civil Action No. 1768-69

ORDER

Upon consideration of the defendants' motion for a protective order, the memoranda filed by the parties and the record in this case, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 1978.

ORDERED that the defendants' motion be, and it hereby is granted; and it is further

ORDERED that the defendants shall not be required to respond to the interrogatories served by plaintiff Black Panther Party on September 19, 1978, until thirty (30) days after plaintiff Black Panther Party answers such interrogatories as the Court directs it to answer in ruling upon the defendants' pending motion to compel answers to the interrogatories served by defendants on April 6, 1978.

UNITED STATES DISTRICT JUDGE

Date: \_\_\_\_\_

CERTIFICATE OF SERVICE

I hereby certify that on this date, I served a copy of the foregoing Motion For A Protective Order, the supporting memorandum and proposed Order upon the plaintiffs by serving a copy thereof by mail, postage prepaid, upon the following counsel of record:

Morton Stavis, Esquire  
744 Broad Street  
Newark, New Jersey 17102


Rhonda Copelon, Esquire  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003

Arthur Kinoy, Esquire  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003

Jack D. Novik, Esquire  
American Civil Liberties Union Foundation  
22 E. 40th Street  
New York, New York 10016

Hayward C. Reed, Esquire  
1776 K Street, N.W.  
Room 607  
Washington, D.C. 20006

Date: October 23, 1978

  
JONATHAN B. SMITH  
Attorney, Department of Justice

SF0661 0240245M

RR HQ

DE SF 014

R 240229Z JAN 78

FM SAN FRANCISCO (66-672B) (P)

TO DIRECTOR (62-112989) ROUTINE

BT

CLEAR

ATTN: LEGAL COUNSEL DIVISION, SUPERVISOR [REDACTED]

DAVID T. DELLINGER, ET AL; V. ATTORNEY GENERAL JOHN N.

MITCHELL, ET AL; ALLEGED VIOLATION OF CONSTITUTIONAL RIGHTS.

RE BUREAU TELETYPE TO SAN FRANCISCO, ET AL, AUGUST 2, 1974  
AND SAN FRANCISCO TEL TO BUREAU, MAY 20, 1975, BOTH IN CAPTIONED  
MATTER.

[REDACTED] OF ATTORNEY [REDACTED] OFFICE  
HAS BEEN IN SAN FRANCISCO OFFICE TO REVIEW ELSUR LOGS RE  
BPP MATERIAL UNDER PROTECTIVE ORDER DESCRIBED IN RE TEL  
DATED AUGUST 2, 1974. [REDACTED] WAS LAST IN SAN FRANCISCO  
OFFICE IN DECEMBER, 1977. [REDACTED] HAS REQUESTED ACCESS  
TO FEDERAL RECORDS FOR OTHER FUTURE DATES INCLUDING JANUARY

REC-21

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 1/5/82 BY [REDACTED]

2/10/93

1048 JKM/SC  
315820

EX-124

23 JAN 26 1978

11-LEGAL COUNSEL

55 FEB 7 1978

Assoc. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
Dep. AD Inv. \_\_\_\_\_  
Asst. Dir. \_\_\_\_\_  
Adm. Serv. \_\_\_\_\_  
Crim. Inv. \_\_\_\_\_  
Fin. & Pers. \_\_\_\_\_  
Ident. \_\_\_\_\_  
Intell. \_\_\_\_\_  
Laboratory \_\_\_\_\_  
Legal Coun. \_\_\_\_\_  
Plan. & Insp. \_\_\_\_\_  
Rec. Mgnt. \_\_\_\_\_  
Spec. Inv. \_\_\_\_\_  
Tech. Serv. \_\_\_\_\_  
Training \_\_\_\_\_  
Public Affs. Off. \_\_\_\_\_  
Telephone Rm. \_\_\_\_\_  
Director's Sec'y \_\_\_\_\_

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PAGE TWO

SF 66-672B

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b7C

26, 1978. IT IS ANTICIPATED THAT [REDACTED] AND/OR OTHER REPRESENTATIVES OF ABOVE ATTORNEYS OFFICE WILL SEEK ACCESS TO SAID FILES ON A FAIRLY FREQUENT BASIS DURING NEXT SEVERAL MONTHS.

AS POINTED IN RE TEL, MAY 20, 1975, A REVIEW OF THESE FILES IS EXTREMELY SLOW. IN PAST, AN AGENT OF SAN FRANCISCO OFFICE HAS BEEN PRESENT DURING ALL REVIEW OF SAID LOGS. SAN FRANCISCO IS OF OPINION THAT AGENT PERSONNEL TIME NOT NEEDED OR JUSTIFIED SINCE MECHANICS FOR REVIEWING ARE ALREADY ESTABLISHED, AND ONLY REASON FOR PRESENCE OF AGENT IS TO INSURE THAT NO DOCUMENTS ARE REMOVED FROM VOLUMES. IT IS NOTED THAT DUTY AGENT AND AGENT HANDLING PRESS MATTERS FOR SAN FRANCISCO OFFICE OCCUPY OFFICES NEAR OFFICE WHERE LOGS ARE REVIEWED.

UACB, SAN FRANCISCO WILL APPOINT A SC OR CLERK TO ACCOMPANY OUTSIDE PERSONNEL DURING THEIR REVIEW OF LOGS AND RELATED DOCUMENTS IN SAN FRANCISCO OFFICE SPACE ON FUTURE OCCASIONS.

BT

Airtel

BEST AVAILABLE COPY

2/2/78

TO: SAC, Louisville (92-281 B) 1 - Mr. Mintz  
SAC, New Orleans (66-2864) 1 - Civil Litigation Unit  
SAC, New York (100-121672)

FROM: Director, FBI

DAVID DELLINGER, et al., v.  
JOHN W. MITCHELL, et al.  
(U.S.D.C., D.C.)  
CIVIL ACTION NO. 1768-69

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED

DATE 1/5/82 BY 4251/1/82 315820  
2/24/93 1048 9803 RDD/SC

BUDED: 2/13/78

62-112989-349  
Rebuairtel to Louisville, New Orleans, and New York  
dated 7/29/76.

Rebuairtel instructed the receiving offices to conduct ELSUR checks concerning certain organizational plaintiffs and, in the event said checks were negative, to furnish affidavits to that effect. The Department had requested the affidavits to support a Motion for Summary Judgment as to those plaintiff organizations.

Louisville, New Orleans, and New York subsequently submitted to Federal Bureau of Investigation (FBI) Headquarters affidavits executed by Special Agents (SAs) Edmund V. Armento, Clifford H. Anderson, and [redacted] respectively. However, the Department thereafter decided to hold in abeyance the Motion for Summary Judgment and the affidavits were not filed.

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On 1/27/78, Departmental Attorney Jonathan Smith, handling captioned matter, advised Legal Counsel (CD) that he is now prepared to move for summary judgment to those plaintiff organizations set forth in Bureau airtel. He plans to file the motion at the trial in this matter, which is set for 2/16/78. That the ELSUR checks be updated and the

REC-21

SEE NOTE - PAGE 2

1. FEB 3 1978

PE UNIT ☐

FBI

SAC, Louisville (1 B)  
SAC, New Orleans (2364)  
SAC, New York (100-12672)

previously submitted affidavits be reexecuted.

Louisville and New Orleans should submit affidavits in language identical to those previously furnished with the exception of the date of the ELSUR check.

New York should add to the affidavit previously submitted language to the effect that the indices searched constitute a comprehensive index of all electronic surveillances conducted by the New York Office of the FBI and if the Catholic Peace Fellowship or the War Resisters League had been the subject of an electronic surveillance conducted by the FBI in New York, New York, at the addresses listed or at any address within the jurisdiction of the New York Field Office, the name of that organization would have been contained in the indices. This language is necessary to bring the New York affidavit into conformity with those of Louisville and New Orleans.

Receiving offices should furnish the affidavits to FBI Headquarters, Attention: LCD, no later than 2/13/78.

Should any questions arise concerning this matter, please contact SA [redacted] FBI Headquarters, LCD, at [redacted]

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b7C

NOTE: By airtel dated 7/29/76, the Bureau requested Louisville, New Orleans, and New York conduct ELSUR checks on three plaintiff organizations and thereafter submit affidavits to support Motion for Summary Judgment in the event said checks were negative. Those offices thereafter submitted affidavits. However, the Department decided to hold in abeyance the filing of the Motion for Summary Judgment. On 1/27/78, Departmental Attorney Jonathan Smith advised LCD he is now prepared to move for summary judgment and requested that the affidavits be updated and reexecuted. He further requested that New York add language to its affidavit to bring it into conformity with affidavits furnished by Louisville and New Orleans. This airtel instructs receiving offices to furnish updated affidavits.

APPROVED:

- 2 -

Director \_\_\_\_\_  
Assoc. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
Dep. AD Inv. \_\_\_\_\_

Adm. Serv. \_\_\_\_\_  
Crim. Inv. \_\_\_\_\_  
Fin. & Pers. \_\_\_\_\_  
Ident. \_\_\_\_\_  
Intell. \_\_\_\_\_  
Laboratory \_\_\_\_\_

Legal Coun. \_\_\_\_\_  
Plan. & Insp. \_\_\_\_\_  
Rec. Mgmt. \_\_\_\_\_  
Spec. Inv. \_\_\_\_\_  
Tech. Servs. \_\_\_\_\_  
Training \_\_\_\_\_  
Public Affs. Off. \_\_\_\_\_

FBI

## TRANSMIT VIA:

☐ Teletype  
☐ Facsimile  
☒ Airtel AIRTEL

## PRECEDENCE:

☐ Immediate  
☐ Priority  
☐ Routine

## CLASSIFICATION:

☐ TOP SECRET  
☐ SECRET  
☐ CONFIDENTIAL  
☐ E F T O  
☐ CLEAR

Date 2/10/78

TO: DIRECTOR, FBI (62-117540)  
 ATTN: LEGAL COUNSEL DIVISION

FROM: SAC, LOUISVILLE (92-281B)

SUBJECT: DAVID DELLINGER, et al., v.  
 JOHN N. MITCHELL, et al.  
 (U.S.D.C., D.C.)  
 CIVIL ACTION NO. 1768-69

ALL INFORMATION CONTAINED  
 HEREIN IS UNCLASSIFIED

DATE 1/5/82 BY SP5/SP6  
 2/16/93 10480 Kml/SC  
 315820

BUDED 2/13/78

62-112989-356

Re Bureau airtel to Louisville, New Orleans and  
 New York, dated 2/2/78.

Enclosed herewith for the Bureau is the original and  
 ten (10) copies of notarized affidavit subscribed and sworn by  
 SA EDMUND V. ARMENTO on 2/10/78 at Louisville, Kentucky,  
 reflecting negative search of ELSUR indices concerning the  
 Southern Conference Educational Fund (SCEF) (LS 100-197), 3210  
 West Broadway, Louisville, Kentucky, telephone numbers  
 502/778-3348 and 502/778-3349, and 3208 West Broadway, Louisville,  
 Kentucky (1969-1974).

1 CC 2-Bureau (Enc. 11)

2-Louisville  
 (1-92-281B)  
 (1-100-6375)

EVA/mla  
 (4)

REC-70

62-112989-3

EX-111

21 FEB 12 1978

b6  
b7C

Approved

14 1978

Communication Airtel 2/10/78  
Enc. To Bureau 62-117540  
From LS-File 92-281B  
BuFile A & Desc of  
affidavit of SA Edmund  
V. Armento  
original + 10 copies  
cc:

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 1/5/82 BY 2514/9

2/10/93 1048 DCM/SC  
315820

62-112078-1



UNITED STATES GOVERNMENT

# Memorandum

TO : The Associate Director

FROM : Legal Counsel *Jam*

SUBJECT: DAVID DELLINGER, et al. v.  
JOHN N. MITCHELL, et al.  
(U.S.D.C., D.C.)  
CIVIL ACTION NO. 1768-69

DATE: 12/9/77

Assoc. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
Dep. AD Inv. \_\_\_\_\_  
Asst. Dir.:  
Adm. Serv. \_\_\_\_\_  
Crim. Inv. \_\_\_\_\_  
Fin. & Pers. \_\_\_\_\_  
Ident. \_\_\_\_\_  
Intell. \_\_\_\_\_  
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Rec. Mgnt. \_\_\_\_\_  
Spec. Inv. \_\_\_\_\_  
Tech. Servs. \_\_\_\_\_  
Training \_\_\_\_\_  
Public Affs. Off. \_\_\_\_\_  
Telephone Rm. \_\_\_\_\_  
Director's Sec'y \_\_\_\_\_

PURPOSE: To advise Records Management Division of a Stipulation modifying the 2/26/74, Protective Order in captioned matter to permit dissemination of material set forth in response to interrogatories in this matter to third parties when Freedom of Information and/or Privacy Act requests are made by such parties.

SYNOPSIS AND DETAILS: Captioned civil action was filed on 6/29/69, on behalf of nine organizations and eight individuals, alleging that each plaintiff was subjected to unlawfully actionable electronic surveillance by the Bureau. Plaintiffs seek declaratory and injunctive relief and money damages. Subsequent to the filing of the suit, five of the organizational plaintiffs voluntarily withdrew rather than respond to interrogatories addressed to them by the defendants.

On 8/5/69, the plaintiffs served interrogatories on the defendants requesting information as to whether defendants engaged in electronic surveillance of conversations to which plaintiffs were parties, the interception of which was aimed at the plaintiffs, and/or in which any acts or activities of the plaintiffs were discussed. The matter of a response to these interrogatories was litigated for several years, and on 1/10/74, the Court ordered that the defendants fully respond to plaintiffs' interrogatories.

Enclosures (3) || ENCLOSURE

1 - [redacted] (Attn: [redacted]) - Encs. (3)

1 - Mr. Mintz

1 - Civ. Lit. Unit - Encs. (3)

11 DEC 13 1977

BFH:tjk



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Legal Counsel to the Associate Director  
RE: DAVID DELLINGER, et al., v.  
JOHN N. MITCHELL, et al.

On 2/26/74, the Court entered a Protective Order (attached) in this matter restricting access to and dissemination of information pertaining to third parties contained in defendants' answers to interrogatories to plaintiffs and their counsel of record in the case until such time as the Court removed or modified the prohibitions.

On 3/18/74, the defendants responded to plaintiffs' interrogatories, identifying numerous electronic surveillances wherein plaintiffs were the subjects thereof or incidentally overheard thereon. The pertinent part of the response identifying these electronic surveillances is attached hereto.

As a result of the 2/26/74 Protective Order, the Bureau has been unable to respond to third party requests under the Freedom of Information and/Privacy Act for information as to whether the requestor was overheard or mentioned on any of the electronic surveillances subject to the Protective Order.

On 12/6/77, Departmental Attorney Larry L. Gregg, Civil Division, furnished Legal Counsel Division a copy of a Stipulation in captioned civil action (attached) modifying the 2/26/74, Protective Order to permit the dissemination of the logs and transcripts of the conversations of third parties by the Federal Bureau of Investigation to those third parties when a Freedom of Information and/or Privacy Act request for such materials is made by a third party who was incidentally overheard or mentioned on any of the electronic surveillances which were subject to the Protective Order.

The Stipulation was approved by United States Judge Aubrey E. Robinson, Jr. on 11/28/77.

RECOMMENDATION: That the Stipulation and modification of the 2/26/74 Protective Order be brought to the attention of all Records Management Division personnel processing requests under the Freedom of Information and/or Privacy Act.

APPROVED:

Director \_\_\_\_\_  
Asst. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
Dep. AD Inv. \_\_\_\_\_

Adm. Serv. \_\_\_\_\_  
Crim. Inv. \_\_\_\_\_  
Fin. & Pers. \_\_\_\_\_  
Ident. \_\_\_\_\_  
Intell. \_\_\_\_\_  
Laboratory \_\_\_\_\_

Legal Coun. *MDK*  
Plan. & Insp. \_\_\_\_\_  
Rec. Mgnt. *ASU/Kal*  
Spec. Inv. \_\_\_\_\_  
Tech. Serv. \_\_\_\_\_  
Training \_\_\_\_\_  
Public Affs. \_\_\_\_\_

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED

DATE 1-5-82 BY SP5 Nig/ry  
3/10/93 1648 DCM/SC  
315820

62-112989-357X

199-315-

ENCLOSURE

Robinson, J

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al.,

Plaintiffs,

v.

JOHN N. MITCHELL, et al.

Defendants.

Civil Action No. 1768-69

FILED

NOV 28 1977

STIPULATION

JAMES F. DAVEY, CLERK

It is hereby stipulated by and between counsel for the plaintiffs and counsel for the defendants that the protective Order entered herein on February 26, 1974, is modified, subject to the approval of this Court, to permit the dissemination of the logs and transcripts of the conversations of third parties by the FBI to those third parties, when a Freedom of Information and/or Privacy Act request for such materials is made by a third party who was incidentally overheard or mentioned or any of the electronic surveillances which are the subject matter of this action.

Respectfully submitted,

*Jonathan B. Smith*

JONATHAN B. SMITH  
Attorney, Department of Justice  
Washington, D.C. 20530  
Telephone: 202/739-3336

Counsel for Defendants

*Morton Stavis*

MORTON STAVIS  
744 Broad Street  
Newark, New Jersey 07102  
Telephone: 201/622-3789

Counsel for Plaintiffs

*FDI Information*  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 2/10/93 BY 1048 Dkm/SC  
3/58220

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al.,

Plaintiffs,

v.

JOHN N. MITCHELL, et al.,

Defendants.

Civil Action No. 1768-69

FEB 25 1974

ORDER

Upon consideration of the motion filed in this cause by the defendants for a protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure to restrict the dissemination of information pertaining to third parties contained in defendants' Answers to Interrogatories, and it appearing to the court that the requested relief is necessary to protect the right of privacy of third parties, now therefore it is this <sup>25th</sup> day of February 1974,

ORDERED, that the copies of defendants' Answers to Interrogatories to be filed with the Court be delivered to this Court personally for the purpose of being preserved and retained under seal;

IT IS FURTHER ORDERED, that the copies of the Answers to Interrogatories served upon counsel for plaintiffs shall be retained in the custody of such counsel;

IT IS FURTHER ORDERED, that no additional copies or por-

purposes of reproduction, without the express permission of this Court. Access to the aforementioned Answers to Interrogatories is restricted to the plaintiffs and their counsel of record in this case;

IT IS FURTHER ORDERED, that the plaintiffs and their counsel shall make no disclosure of any matter relating to individuals other than themselves contained in said Answers to Interrogatories except as may be necessary to effectuate the proceeding in this case and then only in connection with testimony in open Court or in legal argument in Court or in chambers under conditions to be prescribed by the Court;

IT IS FURTHER ORDERED, that prohibition against access by others and disclosure to others shall remain in effect throughout the proceedings in this case and until such time as this Court removes or modifies these prohibitions. If counsel for plaintiffs find that in order to effectively prepare their case for any hearing it will be necessary to make a disclosure, however limited, then, at that time, this Court will entertain an application in this regard and may modify the prohibition against disclosure to the extent that justice requires it;

IT IS FURTHER ORDERED, that immediately upon termination of a proceedings in this Court, counsel for the plaintiffs

A handwritten signature, possibly 'J. C. Rubin', is written over the name 'Jerry C. Rubin'. To the right of the signature, 'U.S.A.' is handwritten and underlined.  
Plaintiff Jerry C. Rubin was incidentally overheard  
on the following "domestic" national security sur-  
veillances conducted in the manner, at the location  
and on the date indicated:

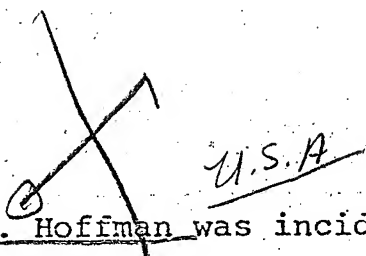
1. W.E.B. DuBois Clubs of America, 5935 Grove  
Street, Oakland, California; microphone surveil-  
lance; 10/25/64.
2. Mortimer Harvey Scheer, 2629 Acton Road, Berkeley,  
California; telephone surveillance on number  
845-7574; 4/23/65.
3. A telephone surveillance of an individual,  
organization or location, the identity of which  
is the subject of a claim of Executive privilege  
by the Attorney General; 5/19/65.
4. Black Panther Party National Headquarters, 3106

Plaintiff David Dellinger was incidentally overheard on the following "domestic" national security surveillances conducted in the manner, at the location and on the date indicated:

1. Students for a Democratic Society, 1103 East 63rd Street, Chicago, Illinois; telephone surveillance on number 667-6050; 10/15/65.
2. Bayard Rustin, Apartment 9J, 340 West 28th Street, New York, New York; telephone surveillance on number YU-9-9890; 6/23/64.
3. Black Panther Party National Headquarters, 3106 Shattuck Avenue, Berkeley, California; telephone surveillance on numbers 845-0103, 845-0104, 845-0773, 846-6705; 4/19/69.



5. Black Panther Party, 2026 Seventh Avenue,  
New York, New York; telephone surveillance  
on numbers 666-3603, 864-8951; 7/2/69,  
9/16/71.
6. A surveillance of an individual, organization  
or location, the identity of which is the  
subject of a claim of Executive privilege by  
the Attorney General; 4/4/71, 4/7/71.
7. Black Panther Party, 1370 Boston Road, Bronx,  
New York; telephone surveillance on numbers  
328-2828, 328-9009, 328-9911; 6/25/70.

  
Plaintiff Abbott H. Hoffman was incidentally overheard on the following "domestic" national security surveillances conducted in the manner, at the location and on the date indicated:

1. Black Panther Party National Headquarters,  
3106 Shattuck Avenue, Berkeley, California;  
telephone surveillance on numbers 845-0103,  
845-0104, 845-0773, 846-6705; 6/10/69, 6/11/69,  
7/9/69.
2. Students for a Democratic Society, 1608 West  
Madison Street, Chicago, Illinois; telephone  
surveillance on numbers 666-3874, 666-3875;  
7/16/69.
3. Howard Joel Enmer, 2915 Ludlow Road, Cleveland,  
Ohio; telephone surveillance on numbers  
752-1874, 752-8944; 11/20/70, 11/27/70.
4. Nancy Sarah Kurshan, 718 Stow Street, Kent,

20, 21, 22, 24, 25

Plaintiff Black Panther Party was the subject of the following "domestic" national security surveillances conducted in the manner, at the location and on the date indicated:

1. Black Panther Party, 3106 Shattuck Avenue, Berkeley, California; telephone surveillance on numbers 845-0103, 845-0104, 845-0773, 846-6705; 2/26/69 to 6/11/70. Telephone numbers 845-0103, 845-0104, 845-0773 were listed in the name of Marilyn H. Moorehead and telephone number 848-6705 was listed in the name of Charles Bursey.
2. Black Panther Party, 1046 Peralta Street, Oakland, California, telephone surveillance on numbers 465-5047, 465-5048, 465-5049; 6/11/70 to 5/23/72. The above telephones were listed

3/8/72. The above telephone was listed under the name of Rosemary Gross and Clarence Terry.

4. Black Panther Party, 8505 East 14th Street, Oakland, California; telephone surveillance on numbers 636-1986, 636-1987, 636-1988, 636-1989;

6/5/72 to 6/19/72. The above telephones were listed in the name of Marilyn Moorehead Peace and Freedom Party.

5. Black Panther Party, 1336 1/2 Fillmore Street, San Francisco, California; telephone surveil-

lance on numbers 922-0095, 922-6322, 922-6415;

5/27/69 to 6/3/71 and from 6/24/71 to 9/23/71.

Telephone number 922-6322 is listed in the name of Sam Napier. The subscriber of the other numbers is not known.

6. Black Panther Party, Apartment 25A, 1200 Lakeshore

Drive, Oakland, California; telephone surveillance

on numbers 465-9592, 763-0202, 763-0203, 763-1919;

12/18/70 to 6/19/72. Telephone number 465-9592

was listed to David Lubell. Telephone numbers

763-1919, 763-0203, 763-0202 was listed to

Stronghold Consolidated Productions Incorporated.

7. Black Panther Party, Apartment 25A, 1200 Lakeshore

Drive, Oakland, California; microphone surveillance;

12/22/70 to 2/10/72 and from 2/26/72 to 6/19/72.

8. Black Panther Party. 2026 Seventh Avenue, New York,

9. Black Panther Party, 1370 Boston Road, Bronx, New York; telephone surveillance on numbers 328-2828, 328-9009, 328-9911; 1/21/70 to 4/12/71. The above telephones were listed in the name of the Black Panther Party.
10. Black Panther Party, 12 West 127th Street, New York, New York; microphone surveillance; 4/22/70 to 5/25/70.
11. Black Panther Party, 402 East 10th Street, New York, New York; telephone surveillance on number 228-7209; 5/29/71 to 6/23/71. The above telephone was listed in the name of Marie Ann Depury.
12. Black Panther Party, 1248 North Gay Street, Baltimore, Maryland; telephone surveillance on number 342-8536; 10/5/70 to 11/21/70. The above telephone was listed in the name of C. L. Jackson.
13. Black Panther Party, 567 Mosher Street, Baltimore, Maryland; telephone surveillance on number 523-9010; 12/14/70 to 12/24/70, and from 12/26/70 to 12/31/70, and from 1/2/71 to 2/10/71. The above telephone was listed in the name of David Lawrence.
14. Black Panther Party, 21-23 Winthrop Street, Roxbury, Massachusetts; telephone surveillance

15. Black Panther Party, 2312 East 79th Street, Cleveland, Ohio; telephone on numbers 881-5054, 881-5055, 881-5056; 11/16/70 to 12/17/70. The above telephones were listed in the name of the National Committee to Combat Fascism-Black Panther Party.

16. Black Panther Party, 9049 Oakland Street, Detroit, Michigan; telephone surveillance on number 897-3610; 5/14/69 to 6/1/69. The above telephone was listed in the name of the Black Arts Development Center.

17. Black Panther Party, 8417 12th Street, Detroit, Michigan; telephone surveillance on number 868-9836; 6/16/69 to 6/16/69. The above telephone was listed in the name of the Black Panther Party.

18. Black Panther Party, 2219 Indiandale Street, Detroit, Michigan; telephone surveillance on number 868-9836; 5/7/70 to 6/2/70 and from 8/6/70 to 10/15/70. The above telephone was listed in the name of the Black Panther Party. National Committee to Combat Fascism.

19. Black Panther Party, 2350 West Madison Street, Chicago, Illinois; telephone surveillance on numbers 243-8276, 738-0778, 738-0779; 5/14/69

20. Black Panther Party, 4233 South Indiana Avenue, Chicago, Illinois; telephone surveillance on numbers 924-6575, 924-6576; 12/21/70 to 3/1/72. No surveillance was conducted on 12/25/70, 1/1/71, 11/25/71, 12/25/71, 1/1/72. The above telephones were listed in the name of Alphonso Massey.
21. Black Panther Party, 4115 South Central Avenue, Los Angeles, California; telephone surveillance on numbers 235-4127, 235-4128, 235-4127, 235-5866; 4/15/69 to 2/3/70. The above telephones were listed in the name of the Black Panther Party.
22. Black Panther Party, 2728 Ellendale Place, Apt. 3, Los Angeles, California; telephone surveillance on number 734-0280; 10/21/69 to 11/12/69. The above telephone was listed in the name of Evon Carter.
23. Black Panther Party, 9818 Anzac, Los Angeles, California; telephone surveillance on numbers 567-8027, 569-5902; 2/10/70 to 2/26/70. Telephone number 567-8027 was listed in the name of Gwen Goodloe and number 569-5902 was listed in the name of Robert Steve Tommy Community Center.
24. Black Panther Party, 2043 East Stockwell, Los Angeles, California; telephone surveillance on numbers 635-

25. Black Panther Party, 334 West 55th Street, Los Angeles, California; telephone surveillance on number 759-4518; 9/10/70 to 12/14/70. The above telephone was listed in the name of Gwen Goodloe.
26. Black Panther Party, 2136 East 113th Street, Los Angeles, California; telephone surveillance on number 564-2728; 12/4/70 to 2/6/71. The above telephone was listed in the name of Dorothy Phillips.
27. Black Panther Party, 731 East 78th Street, Los Angeles, California; telephone surveillance on number 750-5509; 2/4/71 to 2/28/72. The above telephone was listed in the name of Paul Cross.
28. Black Panther Party, 5321 Staunton, Los Angeles, California; telephone surveillance on number 585-1448; 2/25/71 to 2/28/72. The above telephone was listed in the name of Norma Armour.
29. Black Panther Party, 35 Sylvan Avenue, New Haven, Connecticut; telephone surveillance on numbers 562-7463, 562-8557; 1/15/70 to 4/9/71. The above telephones were listed in the name of James E. Wilson.
30. Black Panther Party, 259 Dixwell Avenue, New Haven, Connecticut; telephone surveillance on numbers 4/2/71 to 4/28/71.



31. Black Panther Party, 2935 Columbia Avenue, Philadelphia, Pennsylvania; telephone surveillance on number CE. 5-7203, CE. 5-7525, CE. 5-7526; 7/13/70 to 7/14/70 and from 9/28/70 to 11/10/70. The above telephones were listed in the name of the Black Panther Party.
32. Black Panther Party, 3626 Wallace Street, Philadelphia, Pennsylvania; telephone surveillance on numbers BA. 2-0855, EV. 7-2867, EV. 7-2868; 8/25/70 to 9/28/70 and from 11/23/70 to 1/11/71 and from 1/16/71 to 2/10/71. The above telephones were listed in the name of the Black Panther Party.
33. Black Panther Party, 2941 35th Street, Sacramento, California; telephone surveillance on numbers 457-9831, 457-9991; 7/14/69 to 9/8/69. The above telephones were listed in the name of the Black Panther Party.
34. Black Panther Party, 2327 18th Street, N.W., Washington, D. C.; telephone surveillance on numbers 265-4418, 265-4419, 462-9379; 6/10/70 to 2/1/71 and from 4/19/71 to 6/25/71. As of January 18, 1971, the telephone service at the above address was listed in the name of the Black Panther Party Ministry of Information.

462-9360; 7/30/70 to 2/1/71 and from 4/19/71 to 6/25/71. As of December 22, 1970 the telephone service at the above address was listed in the name of the Black Panther Party Community Information Center.

FBI

## TRANSMIT VIA:

☐ Teletype  
☐ Facsimile  
☒ Airtel

## PRECEDENCE:

☐ Immediate  
☐ Priority  
☐ Routine

## CLASSIFICATION:

☐ TOP SECRET  
☐ SECRET  
☐ CONFIDENTIAL  
☐ E F T O  
☐ CLEAR

Date 2/10/78

TO: DIRECTOR, FBI  
 Attention: SA [REDACTED]  
 Legal Counsel Division

FROM: SAC, NEW ORLEANS (66-2864) (RUC)

DAVID BELLINGER, Et Al, v.  
 JOHN N. MITCHELL, Et Al  
 (U.S.D.C., D.C.)  
 CIVIL ACTION NO. 1768-69

ALL INFORMATION CONTAINED  
 HEREIN IS UNCLASSIFIED

Buded: 2/13/78

DATE 1-5-82 BY SP5 jg/vp 3/5820  
 2/10/93 1048 BK m/SC

Re Bureau airtel to Louisville, New Orleans,  
 and New York, 2/12/78.

Enclosed for the Bureau is the original and  
 three copies of an affidavit of SA C. DONALD BAXTER  
 which responds to referenced airtel.

REC-13

EX-132

7 FEB 27 1978

ENCLOSURE

- ② - Bureau (Enc 4)  
 2 - New Orleans (1 - 66-2864)  
 (1 - 66-2855)

JPM:nep  
 (4)

Approved: [Signature]

Transmitted

(Number)

(Time)

Per

54 MAR 16 1978

b6  
b7c

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al. )  
Plaintiffs, )  
v. )  
JOHN N. MITCHELL, et al., )  
Defendants. )

Civil Action No. 1768-69

Parish of Orleans )  
State of Louisiana ) ss

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 2/10/93 BY 1012 DCM/SC

AFFIDAVIT

I, C. Donald Baxter, after having been duly sworn,  
do hereby depose and state the following:

I am a Special Agent of the Federal Bureau of Investigation (FBI) and am currently assigned to the New Orleans, Louisiana, Field Office of the FBI.

On February 6, 1978, I made a careful and diligent search of the electronic surveillance indices maintained at the New Orleans, Louisiana, Field Office of the FBI, which include the following:

- (1) Index cards indicating the name of subjects of electronic surveillances and the date or dates such surveillances were maintained.
- (2) Index cards indicating the names of persons who while not subjects of a surveillance, were incidentally overheard on surveillance of another and the date or dates of such overhears.

Based upon my search, I determine that these indices

of electronic surveillance of the following

Office of the FBI. If the Southern Conference Educational Fund had been the subject of an electronic surveillance conducted by this Agency in New Orleans, Louisiana, at the address listed, or at any other address within the jurisdiction of the New Orleans, Louisiana, Field Office, the name of that organization would have been contained in the indices.

C. Donald Baxter  
C. Donald Baxter  
Special Agent  
Federal Bureau of Investigation  
New Orleans, Louisiana

Sworn to and subscribed before me this 15<sup>th</sup> day of February, 1978.

Harold M. Cargile  
NOTARY PUBLIC

My commission expires at death.

62-112989-357X2  
197-315-2

COPY  
5 Enc.

2/13/78

ADIC NY

JUNE DAVID DELLINGER; ET AL  
JOHN N. MITCHELL; ET AL  
(USDC, D.C.)  
CIVIL ACTION #69-1768

Encl. for the Bu are original and 4 copies of  
affidavit requested in reairtel. Affidavit  
submitted by SA  NYO.

b6  
b7C

COPY OF ABSTRACT FOR THIS SERIAL IS PLACED IN FILE  
IN LIEU OF THE MAIL WHICH HAS NOT BEEN LOCATED

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED

DATE 1/5/82 BY [signature]

2/10/93

1048 DKM/SC

315820

UNITED STATES GOVERNMENT

# Memorandum

TO: Mr. Clarence M. Kelley  
Director  
Federal Bureau of Investigation

DATE: FEB 22 1978

FROM: Barbara Allen Babcock  
Assistant Attorney General  
Civil Division

BAB:JBSmith:clw  
145-11-71 737-3336

SUBJECT: David Dellinger, et al. v. John N. Mitchell, et al.,  
Civil Action No. 1768-69 (D.D.C.)

Attn: Legal Counsel Division

As you are aware, the Black Panther Party is a plaintiff in the referenced civil action, which seeks injunctive relief and damages on the basis of electronic surveillance of the named plaintiffs' premises and conversations by the Bureau. During the course of discovery, we have provided the plaintiffs with documents, including authorization memoranda, concerning the Bureau's surveillance of the BPP, its offices and officials.

It has recently come to our attention that the Bureau conducted an electronic surveillance of the telephone of [redacted] at [redacted] New York. Documents concerning that electronic surveillance, which were provided to the Congress, demonstrate that the surveillance was based upon [redacted] connection with the BPP. Those documents were not, however, provided to the plaintiffs in the Dellinger case.

We would appreciate your reviewing your files to determine whether documents concerning the above-mentioned electronic surveillance should be provided to the plaintiffs in the Dellinger case.

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HEREIN IS UNCLASSIFIED  
DATE 2/10/93 BY 1048 DCM/SC

EX-111

315820

2/10/7338

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197-35-3K

Legal Counsel

EXP. PROC.  
31 FEB 24 1978  
1731

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b7C



5010-110

-Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED

DATE 1/5/82 BY SP5/BJH/35820  
2/10/93 1048 DCM/SC

Assistant Attorney General ~~FEDERAL GOVERNMENT~~  
Civil Division  
Attn: Jonathan B. Smith, Esq.

February 23, 1978

fl - Assistant Director  
Administrative Services Div  
(Attn:  ) Enc.  
1 - Mr. Mintz  
1 - Civil Lit. Unit

Assistant Director - Legal Counsel  
Federal Bureau of Investigation

DAVID DELLINGER, et al., v.  
JOHN N. MITCHELL, et al.  
(U.S.D.C., D.C.)  
CIVIL ACTION NO. 1768-69

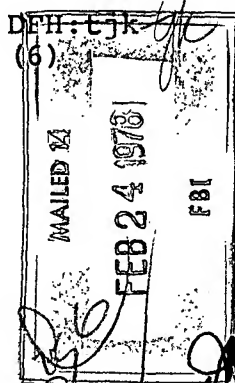
b6  
b7C

By memorandum dated July 16, 1976, the Assistant Attorney General, Criminal Division, advised that on the basis of answers to certain interrogatories provided by plaintiffs Southern Conference Educational Fund, Catholic Peace Fellowship and War Resisters League, and affidavits from Bureau personnel, the Department planned to move for summary judgment as to those three plaintiffs. The memorandum requested that the Bureau conduct elsur checks of the three organizations, and, in the event such checks were negative, that affidavits to that effect be prepared. (Em)

By memorandum dated September 15, 1976, the requested affidavits were forwarded to the Assistant Attorney General, Criminal Division. (2)

On January 27, 1978, Mr. Jonathan B. Smith of your Division advised Legal Counsel Division that the previously executed affidavits had not been filed but that he was now prepared to move for summary judgment as to the above-named plaintiff organizations. He requested that the elsur checks previously conducted be updated and that the affidavits, including that of the Federal Bureau of Investigation (FBI) Personnel Officer, be reexecuted.

Assoc. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
Dep. AD Inv. \_\_\_\_\_  
Asst. Dir.:  
Adm. Serv. \_\_\_\_\_  
Crim. Inv. \_\_\_\_\_  
Fin. & Pers. \_\_\_\_\_  
Ident. \_\_\_\_\_  
Intell. \_\_\_\_\_  
Laboratory \_\_\_\_\_  
Legal Coun. \_\_\_\_\_  
Plan. & Insp. \_\_\_\_\_  
Rec. Mgnt. \_\_\_\_\_  
Spec. Inv. \_\_\_\_\_  
Tech. Servs. \_\_\_\_\_  
Training \_\_\_\_\_  
Public Affs. Off. \_\_\_\_\_  
Telephone Rm. \_\_\_\_\_  
Director's Sec'y \_\_\_\_\_



ST-124

62-112989-357X4  
SEE NOTE--PAGE TWO

REC-13

7 FEB 27 1978

TELETYPE UNIT ☐

FBI/DOJ



Assistant Attorney General  
Civil Division

Enclosed herewith are affidavits executed by Special Agents (SA) C. Donald Baxter, New Orleans, Louisiana, Field Office, Edmund V. Armento, Louisville, Kentucky, Field Office, and Joseph P. Smith, III, New York Field Office. Also enclosed is an affidavit executed by SA S. Ray Burns, Personnel Officer, FBI Headquarters, which attests that the above-named individuals are SAs of the FBI.

Should any questions arise concerning this matter, please contact SA [redacted] Legal Counsel Division, telephone [redacted]

b2  
b6  
b7C

Enclosures (4)

NOTE: In 7/76, the Department requested elsur checks of three organizations who are plaintiffs in captioned matter and the submission of affidavits to support a motion for summary judgment as to those plaintiffs in the event said checks were negative. In 9/76, the requested affidavits were forwarded to the Department. In 1/78, the Departmental Attorney now handling this matter advised that the affidavits had not been filed and requested the elsur checks be updated and the affidavits reexecuted. LCD instructed the appropriate field offices to conduct the elsur checks and submit affidavits. This communication transmits to the Department the requested affidavits and the affidavit of the FBIHQ Personnel Officer that the individuals conducting the elsur checks are SAs of the FBI.

*ref*

*ref*

APPROVED:

Director \_\_\_\_\_  
Asso. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
Dep. AD Inv. \_\_\_\_\_

Adm. Serv. \_\_\_\_\_  
Crim. Inv. \_\_\_\_\_

Ident. \_\_\_\_\_  
Intell. \_\_\_\_\_  
Laboratory \_\_\_\_\_

Legal Coun. \_\_\_\_\_

Insp. \_\_\_\_\_

Rec. Mgmt. \_\_\_\_\_

Training \_\_\_\_\_

Public Affs. Off. \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al., )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 JOHN N. MITCHELL, et al., )  
 )  
 Defendants. )

Civil Action No. 1768-69

City of Washington )  
 ) ss  
 District of Columbia )

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 11/14/93 BY 9803 RDD/SC

AFFIDAVIT

S. Ray Burns, being duly sworn, deposes and says:

- 1) I am a Special Agent of the Federal Bureau of Investigation (FBI) and presently assigned as Personnel Officer at FBI Headquarters, Washington, D.C.
- 2) I hereby attest that C. Donald Baxter is a Special Agent of the FBI currently assigned to the New Orleans, Louisiana Field Office of the FBI.
- 3) I hereby attest that Edmund V. Armento is a Special Agent of the FBI currently assigned to the Louisville, Kentucky Field Office of the FBI.
- 4) I hereby attest that Joseph P. Smith, III, is a Special Agent of the FBI currently assigned to the New York, New York Field Office of the FBI.

S. Ray Burns  
S. RAY BURNS  
Special Agent  
Federal Bureau of Investigation  
Washington, D.C.

UNITED STATES GOVERNMENT

# Memorandum

TO : Mr. William H. Webster  
Director  
Federal Bureau of Investigation

DATE: APR 13 1978

FROM : Barbara Allen Babcock  
Assistant Attorney General  
Civil Division

BAB:JBSmith:dss  
145-11-71

SUBJECT: David Dellinger, et al., v. John N. Mitchell, et al.,  
C.A. No. 1768-69 (D.D.C.)

Attn: Legal Counsel Division

Enclosed for your information and files are copies of  
papers recently filed in the referenced civil action.

Enclosure

ENCLOSURE ATTACHED

12 ENCLOSURE  
100 LETTER  
7338  
100 EA ENC  
7338

REC-26

62-112989-357X5  
197-315-5

ST-121

20 APR 17 1978

b6  
b7C



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

3/5820  
2/10/93 1048DCM/S (C)  
On this Envelope

EXHIBIT

~~62-119989-357X5~~  
62-119989-357X5

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al.,     )  
                                  )  
                  Plaintiffs,   )  
                                  )  
                  v.               )  
                                  )  
JOHN N. MITCHELL, et al.,    )  
                                  )  
                  Defendants.    )  
\_\_\_\_\_  
                                  )

Civil Action No. 1768-69

County of Jefferson     )  
                                  ) ss  
State of Kentucky       )

AFFIDAVIT

I, Edmund V. Armento, after having been duly sworn,  
do hereby depose and state the following:

I am a Special Agent of the Federal Bureau of Investigation  
(FBI) and am currently assigned to the Louisville, Kentucky Field  
Office of the FBI.

On February 10, 1978, I made a careful and diligent search  
of the electronic surveillance indices maintained at the Louisville,  
Kentucky Field Office of the FBI, which include the following:

(1) Index cards indicating the name of subjects  
of electronic surveillances and the date or dates  
such surveillances were maintained;

~~(2) Index cards indicating the names of persons~~  
who while not subjects of a surveillance, were  
incidentally overheard on surveillance of another  
and the date or dates of such overhears.

Based upon my search, I determined that these indices  
contained no record of electronic surveillance of the following  
organization at the addresses and telephone numbers listed:

Southern Conference Educational Fund:

1. 3210 West Broadway                               502/778-3348  
Louisville, Kentucky 40211                       502/778-3349

Exhibit 4

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED 315820  
DATE 2/10/93 BY 1048 DLM/SC

2. 3208 West Broadway  
Louisville, Kentucky 40211  
(1969 to 1974)

The foregoing indices constitute a comprehensive index of all electronic surveillances conducted by the Louisville, Kentucky Field Office of the FBI. If the Southern Conference Educational Fund had been the subject of an electronic surveillance conducted by this Agency in Louisville, Kentucky, at the addresses and telephone numbers listed or at any address within the jurisdiction of the Louisville, Kentucky Field Office, the name of that organization would have been contained in the indices.

Edmund V. Armento

Special Agent  
Federal Bureau of Investigation  
Louisville, Kentucky

Subscribed and sworn to before me this 10th day of February, 1978.

W. H. Carter  
Notary Public

My Comm. Expires Feb. 2, 1979

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
JOHN N. MITCHELL, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

Civil Action No. 1768-69

City of Washington )  
 ) ss  
District of Columbia )

AFFIDAVIT

S. Ray Burns, being duly sworn, deposes and says:

1) I am a Special Agent of the Federal Bureau of Investigation (FBI) and presently assigned as Personnel Officer at FBI Headquarters, Washington, D.C.

2) I hereby attest that C. Donald Baxter is a Special Agent of the FBI currently assigned to the New Orleans, Louisiana Field Office of the FBI.

3) I hereby attest that Edmund V. Armento is a Special Agent of the FBI currently assigned to the Louisville, Kentucky Field Office of the FBI.

4) I hereby attest that Joseph P. Smith, III, is a Special Agent of the FBI currently assigned to the New York, New York Field Office of the FBI.

S. Ray Burns  
S. RAY BURNS  
Special Agent  
Federal Bureau of Investigation  
Washington, D.C.

Subscribed and sworn to before me this 2/25 day of February, 1978.

Margaret L. Davis  
NOTARY PUBLIC

My Commission expires 12/21/77.

Exhibit 5

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 2/10/93 BY 1048 Dkm/SC

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing Motion to Dismiss and for Summary Judgment as to Certain Plaintiffs, and supporting papers, upon the plaintiffs by serving a copy thereof by mail, postage prepaid, upon the following counsel of record:

Morton Stavis, Esquire  
744 Broad Street  
Newark, New Jersey 07102

Rhonda Copelon, Esquire  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003

Arthur Kinoy, Esquire  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003

Jack D. Novik, Esquire  
American Civil Liberties  
Union Foundation  
22 E. 40th Street  
New York, New York 10016

6 April 78  
DATE

Jonathan B. Smith  
JONATHAN B. SMITH  
Attorney, Department of Justice  
Washington, D. C. 20530  
Telephone: 202-739-3336



UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF COLUMBIA

DAVID T. DELLINGER, et al., )

Plaintiffs, )

v. )

JOHN N. MITCHELL, et al., )

Defendants. )

CIVIL ACTION NO.

1768-69

ORDER

Upon consideration of the motion by the defendants for an Order dismissing the claims of plaintiffs Student Non-Violent Coordinating Committee, Congress of Racial Equality, American Servicemen's Union, National Mobilization Committee to End the War in Vietnam and New York Resistance, and Abbott Hoffman, and granting summary judgment for defendants against plaintiffs the Southern Conference Educational Fund, Catholic Peace Fellowship and War Resisters League, the memorandum of points and authorities in support thereof, and the pleadings, affidavits, answers to interrogatories, and replies to requests for admissions on file herein; and finding that plaintiff Hoffman has disregarded Orders of this Court requiring him to respond to interrogatories and has provided neither reasonable explanation nor a showing of inability to produce the information, it is by the Court this \_\_\_\_\_ day of \_\_\_\_\_, 1978;

ORDERED that defendants' motion to dismiss and for summary judgment should be, and is hereby granted; and it is

FURTHER ORDERED that the claims of plaintiffs Student Non-Violent Coordinating Committee, Congress of Racial Equality, American Servicemen's Union, National Mobilization Committee to End the War in Vietnam, New York Resistance and Abbott Hoffman should be, and they hereby are, dismissed; and it is

FURTHER ORDERED that judgment against plaintiffs the Southern Conference Educational Fund, Catholic Peace Fellowship and War Resisters League should be, and hereby is, entered in favor of the defendants.

---

UNITED STATES DISTRICT JUDGE

C25

RUTGERS UNIVERSITY *The State University of New Jersey*

DEC 23 6 34 PM '72

DEPT. OF JUSTICE  
MAIL ROOM  
ORON

SCHOOL OF LAW • NEWARK

*Constitutional Litigation Clinic*

103 Washington Street, Newark, New Jersey 07102

Tel. 201-648-1766

*Writer's Direct*

*Dial Number: 648-5687*

December 22, 1972

RECEIVED

DEC 27 1972

*Appellate and Civil Litigation Room*

Benjamin C. Flannagan, Esq.  
Attorney, Department of Justice  
Washington, D. C. 20530

Dear Mr. Flannagan:

Enclosed are our initial answers to Defendants first interrogatories in the Dellinger v. Mitchell case from five of the individual plaintiffs and four of the plaintiff associations.

We will not pursue the litigation as to the following plaintiff associations: Student Non-violent Coordinating Committee; National Mobilization Committee to End the War; and New York Resistance.

We are still gathering information as to Black Panther Party; the Southern Conference Educational Fund; and Rennie Davis. We will furnish this information shortly.

David Dellinger is presently in the hospital and has been for some time. He will furnish us with the necessary information as soon as he is able.

The information supplied as to Thomas Hayden is incomplete at this time and will be supplemented.

~~As to Mr. Seale, his attorney, Charles Garry is presently evaluating his current situation and will inform us presently of his decision.~~

The necessary verifications will be supplied as to all information. The press of time did not permit the gathering of the necessary signatures from all over the country. In the meanwhile, the enclosed should help in the requisite search of your files to inform us of the facts we seek.

Very truly yours,

*William J. Bender*  
William J. Bender

RECEIVED

DEC 26 1972

Correspondence Control Unit  
Internal Security Division

WJB:da  
Enclosures

Exhibit 1

145-11-71	
DEPARTMENT OF JUSTICE	
3	DEC 26 1972
R.A.O.	
INTERNAL SECURITY DIV	
Civil Section	

Counsel: Frank Askin, Esq. • David Lubell, Esq., Member, New York Bar • William Bender, Esq., Administrative Director

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

DAVID DELLINGER et al

Plaintiff

- v -

AFFIDAVIT

JOHN N. MITCHELL et al

69 Civil 1768

Defendants

STATE OF NEW YORK )  
COUNTY OF NEW YORK : as  
SOUTHERN DISTRICT OF NEW YORK)

JOSEPH P. SMITH, III, being duly sworn, deposes and says:

1. I am a Special Agent of the Federal Bureau of Investigation, Legal Counsel Unit, 201 East 69th Street, New York, New York, 10021.

2. On February 13, 1978, I have caused a diligent search to be made of electronic surveillance indices located in the New York Office of the Federal Bureau of Investigation and have found no record regarding the following plaintiffs:

Plaintiff - Catholic Peace Fellowship  
524 Upper Broadway (212) LO 8-8200  
Nyack, New York (914) EL 8-4601  
  
5 Beekman Street (212) WO 4-8367  
New York, New York

339 Lafayette Street (212) 673-8990  
New York, New York

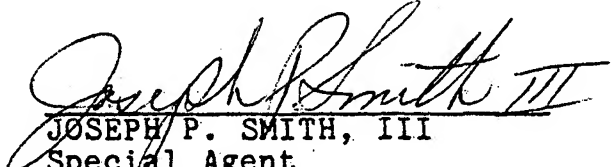
Plaintiff - War Resisters League  
5 Beekman Street (212) CO 7-4592  
New York, New York (212) CO 7-4593  
(212) CO 7-4594

339 Lafayette Street (212) 228-0450  
New York, New York (212) 228-0451  
(212) 228-0452

Exhibit 2

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 2/10/93 BY 0180DCM/SC

The foregoing indices constitute a comprehensive index of all electronic surveillances conducted by the New York Office of the Federal Bureau of Investigation. If the Catholic Peace Fellowship and the War Resisters League had been the subject of an electronic surveillance conducted by this office at the addresses listed, or at any other addresses within the jurisdiction of the New York Office, the names of those organizations would have been contained in the indices.

  
JOSEPH P. SMITH, III  
Special Agent  
Federal Bureau of Investigation

Sworn to before me this

13th day of February, 1978

  
Notary Public

MARTIN A. CROWE  
Attorney and Counsellor At Law  
State of New York  
No. 30-4658820  
Qualified in Nassau County  
Commission Expires March 30, 1979

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al. )  
Plaintiffs, )  
v. )  
JOHN N. MITCHELL, et al., )  
Defendants. )

Civil Action No. 1768-69

Parish of Orleans )  
State of Louisiana ) ss

AFFIDAVIT

I, C. Donald Baxter, after having been duly sworn,  
do hereby depose and state the following:

I am a Special Agent of the Federal Bureau of Investigation (FBI) and am currently assigned to the New Orleans, Louisiana, Field Office of the FBI.

On February 6, 1978, I made a careful and diligent search of the electronic surveillance indices maintained at the New Orleans, Louisiana, Field Office of the FBI, which include the following:

- (1) Index cards indicating the name of subjects of electronic surveillances and the date or dates such surveillances were maintained.
- (2) Index cards indicating the names of persons who while not subjects of a surveillance, were incidentally overheard on surveillance of another and the date or dates of such overhears.

Based upon my search, I determine that these indices contained no record of electronic surveillance of the following organization at the address listed:

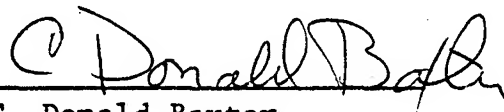
Southern Conference Educational Fund:

822 Perdido Street  
Suite 408  
New Orleans, Louisiana  
(1965 to March, 1966)

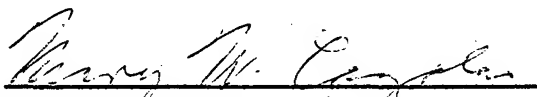
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 2/10/93 BY 1048 DKM/JP

The foregoing indices constitute a comprehensive index of all electronic surveillances conducted by the New Orleans Field

Office of the FBI. If the Southern Conference Educational Fund had been the subject of an electronic surveillance conducted by this Agency in New Orleans, Louisiana, at the address listed, or at any other address within the jurisdiction of the New Orleans, Louisiana, Field Office, the name of that organization would have been contained in the indices.

  
C. Donald Baxter  
Special Agent  
Federal Bureau of Investigation  
New Orleans, Louisiana

Sworn to and subscribed before me this 15<sup>th</sup> day of February, 1978.

  
NOTARY PUBLIC

My commission expires at death.

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF COLUMBIA

DAVID T. DELLINGER, et al., )

Plaintiffs, )

v. )

JOHN N. MITCHELL, et al., )

Defendants. )

CIVIL ACTION NO.

1768-69

STATEMENT OF MATERIAL FACTS AS TO  
WHICH THERE IS NO GENUINE ISSUE

1. Plaintiffs the Southern Conference Educational Fund, Catholic Peace Fellowship, and War Resisters League have alleged that they were subject to electronic surveillance by defendants Mitchell and Hoover. Complaint, ¶6(c).

2. Between 1965 and the present, plaintiff the Southern Conference Educational Fund has maintained offices, and subscribed to telephone service, at the following addresses and with the following phone numbers:

1. 822 Perdido Street  
Suite 408  
New Orleans, Louisiana  
(1965 to March, 1966)
2. 3210 West Broadway 502/778-3348  
Louisville, Kentucky 40211 502/778-3349  
(March, 1966 to present)
3. 3208 West Broadway  
Louisville, Kentucky 40211

Response to plaintiff Southern Conference Educational Fund to Defendants' First Interrogatories, served on June 25, 1976.

3. Between 1965 and the present, plaintiff Catholic

FB & Information  
ALL INFORMATION CONTAINED

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DATE 2/10/93 BY 1048 DCM/SPC

315820



Peace Fellowship has maintained offices, and subscribed to telephone service, at the following addresses and with the following telephone numbers:

1. 5 Beekman Street 212/WO4-8367  
New York, New York  
(1964 to 1968)
2. 339 Lafayette Street 212/673-8990  
New York, New York  
(1968 to present)
3. 524 Upper Broadway 212/LO8-8200  
Nyack, New York 914/EL8-4601  
(1964 to 1976)

Response of plaintiff Catholic Peace Fellowship to Defendants' First Interrogatories, served on May 17, 1976.

4. Between 1965 and the present, plaintiff War Resisters League has maintained offices, and subscribed to telephone service at the following addresses and with the following telephone numbers:

1. 5 Beekman Street 212/CO7-4592  
New York, New York 212/CO7-4593  
(1965 to May, 1969) 212/CO7-4594
2. 339 Lafayette Street 212/228-0450  
New York, New York 212/228-0451  
(June, 1969 to present) 212/228-0452

Response of plaintiff War Resisters League to Defendants' First Interrogatories, served on June 16, 1976.

5. The relevant records of the Federal Bureau of Investigation contain no record that plaintiff the Southern Conference Educational Fund, Catholic Peace Fellowship and War Resisters League were subjected to electronic surveillance by the Federal Bureau of Investigation at the addresses and phone numbers listed.

Affidavits of Joseph H. Smith, III, C. Donald Baxter and Edmund V. Armento, filed herein on April 6, 1978.  
See also, the Defendants' Response to Plaintiffs' Modified Request for Admission of Facts under Rule 36, filed herein

on March 18, 1974; and the Defendants' Response to Interrogatories Propounded by the Plaintiffs, and Appendix A thereto, filed herein on March 18, 1974.

6. Plaintiffs the Southern Conference Educational Fund, Catholic Peace Fellowship and War Resisters League have not been the subject of electronic surveillance conducted by the defendants herein.

Respectfully submitted,

Barbara Allen Babcock /om  
BARBARA ALLEN BABCOCK  
Assistant Attorney General

EARL J. SILBERT  
United States Attorney

Barbara B. O'Malley  
BARBARA B. O'MALLEY

Jonathan B. Smith  
JONATHAN B. SMITH

Attorneys, Department of Justice  
Attorneys for Defendants  
Tenth & Pennsylvania Avenue, N.W.  
Washington, D. C. 20530  
Telephone: 739-3336

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLUMBIA

DAVID T. DELLINGER, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	
JOHN N. MITCHELL, et al.,	)	1768-69
	)	
Defendants.	)	

DEFENDANTS' SECOND SET OF INTERROGATORIES  
AND DOCUMENT REQUESTS TO PLAINTIFF  
THE BLACK PANTHER PARTY

TO: THE BLACK PANTHER PARTY  
c/o Morton Stavis, Esquire  
744 Broad Street  
Newark, New Jersey 07102

The defendants hereby propound the following Interrogatories and Document Requests to plaintiff The Black Panther Party (hereinafter the "BPP") in the above entitled matter to be answered under oath pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure. Answers to said Interrogatories and Document Requests are to be furnished under oath by June 15, 1978, pursuant to said Rules and to the record of the status call had herein on March 30, 1978.

"Document" as used in these interrogatories and document requests means any written, recorded, graphic or other form of material constituting a means of information storage or data compilation in any form.

"Member" as used in these interrogatories and document requests means any person who is now a member of the BPP or was, at any time since 1965, a member of the BPP.

"Affiliate" as used in these interrogatories and document requests shall include, but not be limited to, Stronghold Consolidated Productions, Inc., National Committees to Combat Fascism, and Community (Information) Centers.

"Officer" as used in these interrogatories and document requests means any member of the BPP who has, or had at any time since 1965, a title or position in the BPP (e.g., "Chief of Staff," "Minister of Information").

If any documents, production of which is requested, have been destroyed please set forth a description of each document and its contents, the date of destruction and the reason(s) for destruction.

1. Please state whether any officers or members of the BPP travelled to any foreign country, including but not limited to, Algeria, Cuba, North Korea, North Vietnam, the Peoples Republic of China, and the Union of Soviet Socialist Republic, during the period 1965 to the present.

2. If your response to interrogatory 1 is in the affirmative, please state for each instance of foreign travel:

(a) the names of all members of the BPP making each trip and the position of each in the BPP;

~~(b) the foreign countries and cities visited;~~

(c) the dates of each foreign visit;

(d) the names of all persons with whom each BPP member met in each foreign country and the positions held by them, if any, in foreign governments (whether or not such positions were held in the government of the country visited), or private organizations (including the name thereof);

(e) the names of the persons or organizations (whether governmental or private) who paid for the transportation and/or expenses of the BPP members.

(f) the purpose for each such visit;

(g) produce for inspection and copying all documents which reflect or relate to such foreign travel, including but not limited to, itineraries, travel or lodging receipts, minutes or reports of meetings attended, and newspaper accounts.

3. Please state whether BPP officers or members had or maintained any contacts with representatives of foreign governments or foreign private organizations, during the period 1965 to the present, exclusive of those set forth in response to Interrogatory 2.

4. If your response to interrogatory 3 is in the affirmative, please state for each such contact:

(a) the name of the person with whom the contact was had or maintained, the government or private organization of which he was a representative, and the position held by him in that government or organization;

(b) the date of each contact;

(c) the purpose of each contact;

(d) produce for inspection and copying all documents which refer or relate to each contact with representatives of foreign governments or organizations, including but not limited to telephone bill records, minutes or reports of such contacts, and weekly, monthly, or other reports submitted by the International Section of the BPP.

5. Please state whether any BPP officers or members were provided military training or training in the use of firearms or explosives by representatives of foreign governments or private organizations during the period 1965 to the present.

6. If your response to Interrogatory 5 is in the affirmative, please state for each instance of such training:

(a) the names of the BPP officers and members who were provided such training;

(b) the names of the persons providing the training, the government or organization of which they were representatives and the positions held by them in that government or organization;

(c) the date(s) and location(s) of the training;

(d) produce for inspection and copying all documents which refer or relate to such training, including but not limited to manuals or instructions received during such training.

7. Please state whether the BPP or its officers or members received monetary contributions or payments of any kind from representatives of foreign governments or foreign private organizations during the period 1965 to the present.

8. If your response to Interrogatory 7 is in the affirmative, please state for each contribution or payment:

(a) the name of the person making the contribution or payment, the government or organization of which he was a representative, and the position held by him in such government or organization;

(b) the amount of the contribution or payment and the date it was received;

(c) as to any payment for services or products, a description of the services rendered or products delivered;

(d) produce for inspection and copying all documents which refer or relate to each contribution or payment.

9. Please state whether the BPP has ever requested that the United Nations accord it any status in that organization.

10. If your response to Interrogatory 9 is in the affirmative, please state:

(a) the date of the request(s);

(b) the results of the request(s);

(c) the purpose for the request(s);

(d) produce for inspection and copying all documents which refer or relate to any such request(s).

11. Identify by make, model and serial number each revolver, rifle, shotgun and other firearm or weapon which has been stored or located at any time since 1965 in an office or other location owned, leased or otherwise occupied, possessed or used by the BPP, its officers, chapters, branches, affiliates and members.

12. As to each firearm identified, state whether it is or was registered under the statutes or laws of any jurisdiction, and, as to each which is or was registered, state the person or organization by whom it is or was registered and the registration or permit number.

13. Identify by description all explosives which have been stored or located at any time since 1965 in an office or other location owned, leased or otherwise occupied, possessed or used by the BPP, its officers, chapters, branches, affiliates and members.

~~14. With respect to each firearm, weapon or explosive~~  
listed in response to Interrogatories 11, 12 and 13, please state:

(a) the address of the office or other location at which it was stored or located;

(b) the dates upon which it was stored or located at that address;

(c) the purpose for the storage or location of the firearm or explosive.

15. Produce for inspection and copying all documents which relate or refer to the storage or location of any firearm, weapon or explosive at an office or other location owned, leased or otherwise occupied, possessed or used by the BPP, its officers, chapters, branches, affiliates, and members.

16. Produce for inspection and copying all documents originated by the BPP, its officers, chapters, branches, affiliates, and members, which reflect statements, suggestions, orders, or policy that members or others should kill police officers, judges, or other public officials (including, but not limited to, issues of "The Black Panther" newspaper).

Respectfully submitted,

Barbara Allen Babcock / am  
BARBARA ALLEN BABCOCK  
Assistant Attorney General

EARL J. SILBERT  
United States Attorney

Barbara B. O'Malley  
BARBARA B. O'MALLEY

Jonathan B. Smith  
JONATHAN B. SMITH

Attorneys, Department of Justice  
Attorneys for Defendants  
Tenth & Pennsylvania Avenue, N.W.  
Washington, D. C. 20530  
Telephone: 739-3336



CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing Defendants' Second Set of Interrogatories and Document Requests to Plaintiff The Black Panther Party, upon the plaintiffs by serving a copy thereof by mail, postage prepaid, upon the following counsel of record:

Morton Stavis, Esquire  
744 Broad Street  
Newark, New Jersey 07102

Rhonda Copelon, Esquire  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003

Arthur Kinoy, Esquire  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003

Jack D. Novik, Esquire  
American Civil Liberties  
Union Foundation  
22 E. 40th Street  
New York, New York 10016

6 April 78  
DATE

Jonathan B. Smith  
JONATHAN B. SMITH  
Attorney, Department of Justice  
Washington, D. C. 20530  
Telephone: 202-739-3336

MORTON STAVIS  
COUNSELOR AT LAW

744 BROAD STREET  
NEWARK, NEW JERSEY 07102

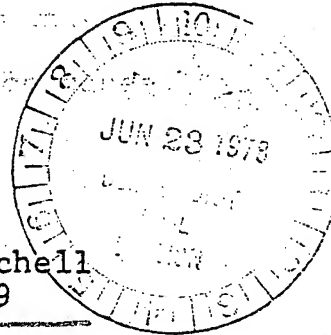
(201) 622-3789  
(201) 622-3649

FEDERAL GOVERNMENT

June 20, 1978

Honorable Aubrey E. Robinson, Jr.  
United States District Court  
U. S. Court House  
Washington, D. C. 20001

Re: Dellinger v. Mitchell  
Civil No. 1768-69



My dear Judge Robinson:

In accordance with my conversation of today with Mr. Pasano, I enclose the original and two copies of each of the following:

- 1) Response to Motion to Dismiss and for Summary Judgment as to Certain Plaintiffs;
- 2) Affidavit of Morton Stavis, dated today;
- 3) Counter-Statement by Plaintiffs of Material Facts as to Which There is a Genuine Issue Necessary to be Litigated;
- 4) Objections to Second Set of Interrogatories and Document Requests Addressed to Plaintiff Black Panther Party.

I believe that the issues on the motion for summary judgment, at least those concerning the Southern Conference Educational Fund, the Catholic Peace Fellowship and the War Resisters League, may require oral argument.

Very respectfully yours

Morton Stavis

MS:mbt  
Enclosures

cc: Jonathan B. Smith, Attorney  
Department of Justice

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 1-5-82 BY 1048 DCM/JS  
272/143 1048 DCM/JS  
315820

ICC MADE  
FOR 7338

ENCLOSURE

JUL 31 1978  
Butler 62-112989

145-112989-358  
17338

145-112989-358  
LEA  
JUL 20 1978

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLUMBIA

-----  
DAVID T. DELLINGER, et al.,

Plaintiffs,

v.

Civil Action No. 1768-69

JOHN N. MITCHELL, et al.,

Defendants.  
-----

RESPONSE TO MOTION TO DISMISS AND FOR  
SUMMARY JUDGMENT AS TO CERTAIN PLAINTIFFS

The motion of the defendants has three parts:

1) A motion to dismiss the claims of plaintiffs Student Non-Violent Coordinating Committee, Congress of Racial Equality, American Servicemen's Union, National Mobilization Committee to End the War in Vietnam, and New York Resistance, for failure to prosecute this action.

2) A motion for summary judgment against the plaintiffs The Southern Conference Educational Fund, Catholic Peace Fellowship, and War Resisters League, on the claim that the record demonstrates that those plaintiffs were not subjected to electronic surveillance by the defendants.

3) A motion to dismiss as to the plaintiff Abbott Hoffman for failure to comply with the orders of this Court requiring answers to certain interrogatories.

Our response is directed to the separate portions of the motion.

I.

Plaintiffs Student Non-Violent Coordinating Committee, Congress of Racial Equality, American Servicemen's Union, National Mobilization Committee to End the War in Vietnam, and New York Resistance do not intend to prosecute this action and have no objection to a dismissal upon those grounds.

II.

Plaintiffs The Southern Conference Educational Fund, Catholic Peace Fellowship, and War Resisters League dispute the motion for summary judgment because it is by no means demonstrated that the said plaintiffs were not the subject of electronic surveillance.

The record in this respect is as follows:

Plaintiffs served interrogatories seeking, among other facts, details as to all electronic surveillance -

- "a) To which plaintiffs were parties
- b) The interception of which was aimed at plaintiffs; and
- c) In which any acts or activities of plaintiffs were discussed."

In 1974, in respect to the plaintiffs' interrogatories, the defendants denied that the plaintiffs Southern Conference Educational Fund, Catholic Peace Fellowship, and other organizations were ever the subject of electronic surveillance, though no reference is made to the officers of said organizations.

At the time, it was arguable that the defendants did not know the names of the officers of those organizations. Defendants later, in 1975, served interrogatories demanding the names of officers of those organizations. In due course those interrogatories were answered and the defendants obtained the sought-after information.

It is in the light of this data, now in the hands of the defendants, and the annexed affidavit of Morton Stavis, that the Court should evaluate the affidavits submitted by the defendants in support of their motion for summary judgment.

The affidavits of Joseph P. Smith III, C. Donald Baxter, and Edwin V. Armento are carefully phrased so that they state certain facts but may be concealing the facts relevant to this case, as follows:

- a) The affidavits state that no record has been found regarding the named plaintiff organizations; nothing is said about

officers of the organizations - and, after all, an organization, as such, does not use a phone. The organization functions through its officers.

b) The affidavits reveal nothing about the manner in which the indices which were examined are kept. The annexed affidavit of Morton Stavis, in its references to the testimony of John L. Smythe, shows that the method of keeping the indices in fact does not reveal the names of organizations.

c) The affidavits refer to the search of local indices. But as the aforesaid affidavit of Morton Stavis shows, the main index of electronic surveillance is the ELSUR index maintained in Washington and nothing is mentioned about that at all.

d) The affidavits show nothing with respect to the search of case files. The affidavit of Mr. Stavis demonstrates that in the Kinoy case an inspection of the case files resulted in the disclosure of a substantial number of incidents of electronic surveillance though the existence of such surveillance had earlier been denied.

Thus the affidavits may be concealing more than they reveal. As the affidavit of Morton Stavis shows, the means and methods of the maintenance of electronic surveillance records have been the subject of sworn testimony subject to cross-examination. When that is done - and perhaps it should be in this case by depositions - the full story will be told.

Plaintiffs believe that on the basis of the foregoing, the Court should deny the motion for summary judgment. If, however, the Court retains any doubt of the matter, then plaintiffs will be pleased to undertake to notice the taking of depositions in the matter so that the Court can have a record from the affiants themselves as to the limited nature of their affidavits.

Aside from the plain insufficiency of the affidavits there is another factor also set forth in the affidavit of Morton Stavis which strongly indicates that the motion for summary judgment

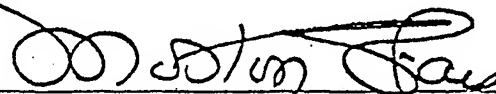
should not be granted.

The record of government denials of electronic surveillance followed by concessions that such surveillance did in fact occur is by this time so extensive that it is not possible to accept at face value a government affidavit of such a denial. It may be, as we have indicated above, that such a denial should trigger active discovery techniques on the other side. And if the Court so indicates, we shall promptly file notices to take depositions of persons in charge of the electronic surveillance indices and take the kinds of steps which caused the explosion of information in the case of Kinoy v. Mitchell, as detailed in the affidavit of Morton Stavis.

III.

As to the plaintiff Hoffman, counsel states to the Court that he does not know his present whereabouts. Counsel urges that there is no reason to dismiss the proceedings against Mr. Hoffman at this time. When the case has been set for trial, if it still appears that Mr. Hoffman is not available to answer interrogatories, there will be time enough then for the Court to take whatever action is called for. Certainly defendants have shown no reason why any action is required to be taken now.

Respectfully submitted,

  
MORTON STAVIS  
Attorney for the Plaintiffs  
744 Broad Street  
Newark, N. J. 07102  
(201) 622-3789

Dated: Newark, N. J.  
June 20, 1978.

STATE OF NEW JERSEY )  
 ) ss.:  
COUNTY OF E S S E X )

MORTON STAVIS, being duly sworn according to law, upon his oath deposes and says:

1. I am one of counsel for the plaintiffs in the within case and I make this affidavit in response to the motion for summary judgment against the plaintiff Southern Conference Educational Fund, Catholic Peace Fellowship, and War Resisters League.

2. I have been involved in a number of cases relating to electronic surveillance in addition to the instant one. In this affidavit I shall set forth knowledge obtained in other cases which shows the inadequacy and unreliability of denials of electronic surveillance as those denials appear in the affidavits of Joseph H. Smith III, C. Donald Baxter, and Edwin V. Armento.

I.

3. In or about September 17, 1976, I was one of counsel in a case entitled In re: Grand Jury Proceedings - Subpoena of Jay Weiner, Subpoena of Phillip Kent Shinnick, Civil Action Nos. 4636 and 4643, United States District Court, Middle District of Pennsylvania. This case involved an effort by the government to enforce a grand jury subpoena. The witnesses sought to vacate the subpoena on several grounds, one of which was that it was the product of unlawful electronic surveillance.

4. In the course of extensive evidentiary hearings which were conducted on that matter, testimony was taken of John L. Smythe, who had been identified as the person "in a supervisory capacity" in F.B.I. headquarters in Washington, D.C. He described his function as follows:

"Well, among other things, I maintain and control the electronic surveillance indices, which is known as the ELSUR indices." (Tr. 9/17/76, 59-17.) \*/

\*/ All references to the testimony of Mr. Smythe are to his testimony on September 17, 1976, in open court before the Hon. William J. Nealon, Chief Judge, U.S. District Court, Middle Dist. of Pennsylvania.

5. Mr. Smythe described the index as being maintained on 3x5 cards and the information contained thereon as being:

"A. It would be the name of the individual overheard, the date of the overheard and the source of the overheard.

Q. What do you mean by source of overheard?

A. The identifier as to the -- it's a code symbol number to the electronic device whereby they were overheard, over which they were overheard. If it were a telephone, it would be a code symbol designating a telephone.

Q. Is that the only information that is contained on these cards?

A. That is all.

Q. Is that the only information that you have?

A. That I have?

Q. Yes. In your indices do you have any back-up information to the information contained on the 3x5 card?

A. In some instances there might be some specific identifier relative to the individual overheard. Not very often, but every once in a while the agent who has prepared the card may put down the name of a company or something like this, some type of identifying data relative to the individual who was overheard." (Tr. 60-2 to 22, emphasis supplied.)

6. Mr. Smythe was describing the central electronic surveillance index maintained for the entire country by the F.B.I.

7. He then described how he obtains the cards in question:

"Q. Where do you get your information, Mr. Smythe?

A. Where do I get what information?

Q. The information that comes into those indices?

A. In the cards?

Q. Right.

A. From the field office.

Q. From the field office. Is it telephoned in to your office?

A. No.

Q. Do they make up the cards and send them in?

A. That's correct; they make up the cards and send them in.

Q. How many field offices send information into your department?



A. How many do on a regular basis?

Q. Right.

A. I can't tell you.

Q. Are all of them supposed to, if they conduct taps?

A. All of them are supposed to, that's correct." (Tr. 63-4 to 21.)

8. It thus is clear that the information in the field offices is the same as that in the central office. It is also clear that the cards give only the names of the individuals who are overheard and, as stated by Mr. Smythe, only "once in a while" does the agent "put down the name of a company or something like this, some type of identifying data relative to the individual who was overheard" (Tr. 60-19 et seq.).

9. It is plain that a denial of overhearing of an organization is no indication whatever as to whether there were overhearings of individuals at the organizations' headquarters, for the simple reason that the indices do not show organizational names.

10. I am also one of counsel in Kinoy v. Mitchell, #70-Civ-5698, U. S. District Court, So. Dist., New York. In that case there was an original denial of any unlawful electronic surveillance. Thereafter, there was an admission of 23 overhearings. Counsel in that case challenged the adequacy of the search and served a notice to take depositions on the persons in charge of the field office. Before the depositions were actually taken, the local F.B.I. office agreed to examine case files in addition to its indices of overhearings. Following that, the defendants admitted 138 additional overhearings - and they have not yet completed the search of their files. Annexed hereto and made a part hereof is a copy of a letter dated March 20, 1978, sent by the United States Attorney in Kinoy v. Mitchell, admitting that there had been a discovery of additional incidents of electronic surveillance after the first

disclosures. It will be observed that the U.S. Attorney requested that an investigation be made of the circumstances of this non-disclosure.

11. The experience in both the Weiner-Shinnick case and the Kinoy case strongly suggests the unreliability of affidavits denying unlawful electronic surveillance, and that is even true more so in the instant case because it does not appear that any search was made except in the electronic surveillance indices which were maintained in the local office. It is thus clear that the search was made except in the electronic surveillance indices which were maintained in the local office.

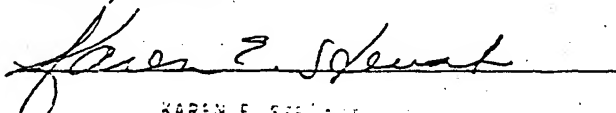
12. In addition to the fact that there was no indication of what was contained on the indices which were examined, it is clear that a mere search of indices without a search of case files is a wholly unreliable means of determining the existence of electronic surveillance. The extensive disclosures in the Kinoy case occurred only after case files were studied in addition to the electronic surveillance indices.

13. In view of the massive disclosures of F.B.I. surveillance of organizations which disagreed with government policy - and the organizations here involved are certainly in that category - it is not conceivable that there was not F.B.I. surveillance, including electronic surveillance, of these organizations and their officers.

14. All that is being presented in the within motion is that the F.B.I. has made a limited inspection through its local offices and has reported that nothing has been found in that limited inspection. The affidavits do not show that there was no electronic surveillance of the organizations in question.

  
MORTON STAVIS

Sworn to and subscribed  
before me this 20th day of  
June, 1978.

  
KAREN E. STEWART  
A Notary Public of New Jersey  
My Commission Expires Feb. 10, 1981



United States Department of Justice

UNITED STATES ATTORNEY

SOUTHERN DISTRICT OF NEW YORK

ONE ST. ANDREW'S PLAZA

NEW YORK, NEW YORK 10007

ADDRESS REPLY TO  
"UNITED STATES ATTORNEY"  
AND REFER TO  
INITIALS AND NUMBER

March 20, 1978

LGC:n

BY HAND

Honorable Robert J. Ward  
United States District Judge  
United States Courthouse  
Foley Square  
New York, New York 10007

BY HAND

Honorable  
United S  
United S

Re: Kinoy v. Mitchell  
70 Civ. 5698 (RJW)

Dear Judge Ward:

In the course of preparing the Government's response to plaintiffs' request to produce documents pursuant to Rule 34 of the Federal Rules of Civil Procedure, the FBI has just advised this office that it has discovered that there are additional incidents of electronic surveillance of plaintiff Arthur Kinoy in its files. We have asked the FBI to promptly and thoroughly investigate this matter in order to determine the number of such undisclosed incidents of electronic surveillance, the surrounding facts and circumstances, and the reasons why they were not previously disclosed. We will report to the Court and counsel on these matters as soon as the investigation is complete. At this time, we are unable to determine what, if any, effect these matters will have on the Government's pending motion to dismiss.

Respectfully submitted,

ROBERT B. FISKE, JR.  
United States Attorney

By:

LOUIS G. CORSI  
Assistant United States Attorney  
Tel. No.: (212) 791-1967

cc: Michael Ratner, Esq.  
351 Broadway  
New York, New York

LGC:n

BY HAND

Honorable Robert J. Ward  
United States District Judge

March 20, 1978

Page 2.

cc: Rhonda Copelon, Esq.  
Center for Constitutional Rights  
853 Broadway  
14th Floor  
New York, New York 10003

Jeremiah S. Gutman, Esq.  
363 Seventh Avenue  
New York, New York 10001

Marvin Segal, Esq.  
745 Fifth Avenue  
New York, New York

Marshall Perlin, Esq.  
36 West 44th Street  
New York, New York

David White, Esq.  
U. S. Department of Justice  
Civil Division  
General Litigation Section  
Washington, D.C. 20530

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLUMBIA

-----  
DAVID T. DELLINGER, et al.,

Plaintiffs,

v.

Civil Action No. 1768-69

JOHN N. MITCHELL, et al.,

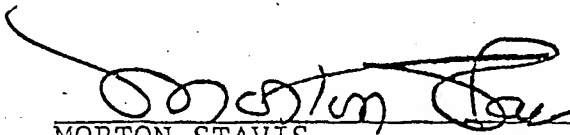
Defendants.  
-----  
FLOOR

PLAINTIFFS' COUNTER-STATEMENT  
OF MATERIAL FACTS AS TO WHICH  
THERE IS A GENUINE ISSUE  
NECESSARY TO BE LITIGATED

Plaintiffs agree to the following numbered paragraphs of the defendants' Statement of Material Facts as to Which There is no Genuine Issue: Paragraphs # 1, 2, 3, and 4.

Plaintiffs state that there is a genuine issue necessary to be litigated with respect to the assertions in Paragraphs # 5 and 6 of the defendants' statement. See affidavit of Morton Stavis, dated June 20, 1978, submitted in response to the motion for summary judgment.

Respectfully submitted,

  
MORTON STAVIS  
Attorney for Plaintiffs  
744 Broad Street  
Newark, N. J. 07102  
(201) 622-3789

Dated: Newark, N. J.  
June 20, 1978.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served copies of the foregoing Response to Motion to Dismiss and for Summary Judgment as to Certain Plaintiffs, the Affidavit of Morton Stavis, and Plaintiff's Counter-Statement of Material Facts as to Which There is a Genuine Issue Necessary to be Litigated, upon the defendants by serving copies thereof by mail, postage prepaid, upon:

Jonathan B. Smith, Attorney  
Department of Justice  
Washington, D. C. 20530.

  
MORTON STAVIS

Dated: June 20, 1978.

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLUMBIA

-----  
DAVID T. DELLINGER, et al.,

Plaintiffs,

Civil Action No. 1768-69

vs.  
JOHN N. MITCHELL, et al.,

Defendants.

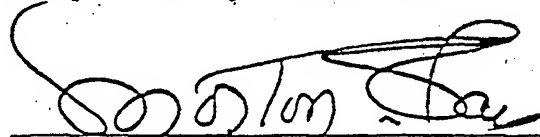
-----  
OBJECTIONS TO SECOND SET OF  
INTERROGATORIES AND DOCUMENT  
REQUESTS ADDRESSED TO THE  
PLAINTIFF BLACK PANTHER PARTY

Plaintiff Black Panther Party objects to answering each of the sixteen interrogatories and document requests contained in the second set of interrogatories and document requests addressed to that plaintiff, on the grounds that each of the interrogatories or document requests -

a) Seeks information which is not relevant to the subject matter involved in the pending action, nor is it reasonably calculated to lead to discovery of admissible evidence; and/or

b) Seeks information violative of the rights of the plaintiff under the First Amendment.

Respectfully submitted,



MORTON STAVIS  
Attorney for Plaintiffs  
744 Broad Street  
Newark, N. J. 07102  
(201) 622-3789

Dated: Newark, N. J.  
June 20, 1978.

CERTIFICATE OF SERVICE

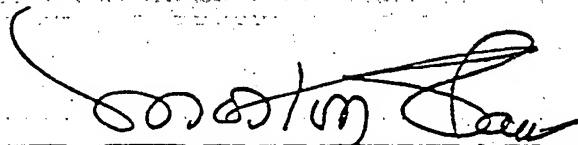
I hereby certify that on this date I served a copy of the foregoing Objections to Second Set of Interrogatories and Document Requests Addressed to the Plaintiff Black Panther Party upon the defendants by serving a copy thereof by mail, postage prepaid, upon the following:

Defendants

Jonathan B. Smith, Attorney  
Department of Justice  
Washington, D. C. 20530.

OBJECTIONS TO SECOND SET OF  
INTERROGATORIES AND  
DOCUMENT REQUESTS

Dated: June 20, 1978.



MORTON STAVIS



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al.,

Plaintiffs,

v.

JOHN N. MITCHELL, et al.,

Defendants.

Civil Action No. 1768-69

FEB 26 1974

ORDER

Upon consideration of the motion filed in this cause by the defendants for a protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure to restrict the dissemination of information pertaining to third parties contained in defendants' Answers to Interrogatories, and it appearing to the Court that the requested relief is necessary to protect the right of privacy of third parties, now therefore it is this <sup>26th</sup> day of February 1974,

ORDERED, that the copies of defendants' Answers to Interrogatories to be filed with the Court be delivered to this Court personally for the purpose of being preserved and retained under seal;

IT IS FURTHER ORDERED, that the copies of the Answers to ~~Interrogatories served upon counsel for plaintiffs~~ shall be retained in the custody of such counsel;

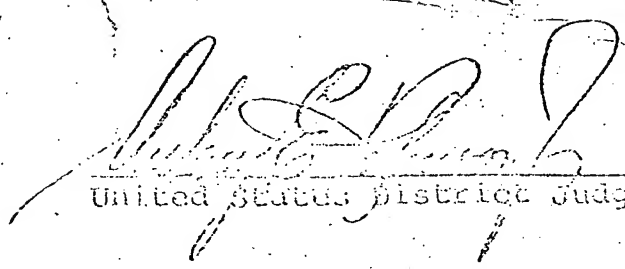
IT IS FURTHER ORDERED, that no additional copies or portions of said Answers to Interrogatories shall be made by the plaintiffs or their counsel, nor shall the aforementioned Answers to Interrogatories be released to any other person.

purposes of reproduction, without the express permission of this Court. Access to the aforementioned Answers to Interrogatories is restricted to the plaintiffs and their counsel of record in this case;

IT IS FURTHER ORDERED, that the plaintiffs and their counsel shall make no disclosure of any matter relating to individuals other than themselves contained in said Answers to Interrogatories except as may be necessary to effectuate the proceeding in this case and then only in connection with testimony in open Court or in legal argument in Court or in chambers under conditions to be prescribed by the Court;

IT IS FURTHER ORDERED, that prohibition against access by others and disclosure to others shall remain in effect throughout the proceedings in this case and until such time as this Court removes or modifies these prohibitions. If counsel for plaintiffs find that in order to effectively prepare their case for any hearing it will be necessary to make a disclosure, however limited, then, at that time, this Court will entertain an application in this regard and may modify the prohibition against disclosure to the extent that justice requires it;

IT IS FURTHER ORDERED, that immediately upon termination of a proceedings in this Court, counsel for the plaintiffs shall deliver to this Court-personally the copy of the aforementioned Answers to Interrogatories and any additional copies made pursuant to the Court's permission for the purpose of being sealed and preserved with the records of this case in the event of appellate review.

  
United States District Judge

Date of Mail APRIL 15, 1977

Has been removed and placed in the Special File Room of Records Section.

See File 66-2554-7530 for authority.

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 1/4/82 BY SP5 JHP  
2-9-93 1048 DKM/SC  
35820

Subject JUNE MAIL -DAVID T. DELLINGER *DS*

79 MAY 19 1977

Removed By \_\_\_\_\_

File Number 62-112989-353

Permanent Serial Charge Out

Date of Mail AUGUST 6, 1976

Has been removed and placed in the Special File Room of Records Section.

See File 66-2554-7530 for authority.

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED

DATE 1/4/82 BY SP5 MJA/vp 325820  
2-9-93 1048 DCM BC

Subject JUNE MAIL -DAVID DELLINGER

Removed By 79 SEP 30 1976

File Number 62-112989-352 F 321

Permanent Serial Charge Out

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION

# Memorandum

Assoc. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
Dep. AD Inv. \_\_\_\_\_  
Asst. Dir.: \_\_\_\_\_  
Adm. Servs. \_\_\_\_\_  
Crim. Inv. \_\_\_\_\_  
Ident. \_\_\_\_\_  
Intell. \_\_\_\_\_  
Laboratory \_\_\_\_\_  
Legal Coun. \_\_\_\_\_  
Plan. & Insp. \_\_\_\_\_  
Rec. Mgnt. \_\_\_\_\_  
Tech. Servs. \_\_\_\_\_  
Training \_\_\_\_\_  
Public Affs. Off. \_\_\_\_\_  
Telephone Rm. \_\_\_\_\_  
Director's Sec'y \_\_\_\_\_

TO : Assistant Director  
Records Management Division

DATE: 10/2/78

FROM : Assistant Director  
Legal Counsel

- 1 - Mr. Bassett (Enc.)  
(Attn: Unit Chief, Special Projects Review Unit)
- 1 - Mr. Mintz
- 1 - Civ. Lit. Unit (Enc.)

SUBJECT: DAVID DELLINGER, et al. v. JOHN N. MITCHELL, et al.  
(U.S.D.C., D.C.)  
CIVIL ACTION NO. 1768-69

PURPOSE: To report receipt of Document Requests And Cross-Interrogatories Served By Plaintiff, Black Panther Party (BPP).

SYNOPSIS AND DETAILS: Captioned civil action seeks monetary damages for allegedly illegal electronic surveillance of plaintiffs in the past and injunctive relief barring such coverage in the future. Plaintiffs are eight individuals and four organizations including the BPP. Extensive discovery has taken place in connection with this litigation.

In April, 1978, we propounded Defendants' Second Set of Interrogatories and Document Requests To Plaintiff, the BPP. These sixteen interrogatories seek, inter alia, information re foreign travel by, explosives training for, and possession of firearms and explosives by, officers and members of the BPP.

In June, 1978, plaintiff BPP filed objections to the sixteen interrogatories on the grounds that they are irrelevant and violative of plaintiffs' first amendment rights.

On July 28, 1978, we filed a Motion to Compel Answers to the Interrogatories, asserting that responses to the interrogatories were necessary to support the good faith defense of the Federal Defendants and are relevant to the mitigation of damages argument.

On September 18, 1978, Plaintiffs' Response To Defendants' Motion To Compel Answers To Second Set Of Interrogatories and Document Requests And Cross-Interrogatories, Served By Plaintiff, Black Panther Party, (copy attached), were filed.

Enclosure

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(4)

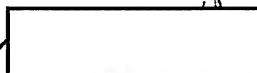
Bufile 62-112989

MAY 15 1979



ENCLOSURE  
JUN 18 1979

ENCLOSURE



9-LEGAL COUNSEL

b6  
b7C

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI/DOJ

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 1-5-82 BY SP5 EJA/SP5 S820

Assistant Director  
Records Management Division  
Re: David Dellinger

Basically, the interrogatories seek the information in possession of Federal Defendants upon which the claim of good faith is predicated.

Copies of the September 18, 1978, filings were furnished to Legal Counsel Division (LCD); on September 25, 1978, by Departmental Attorney Jonathan Smith, who is representing Federal Defendants in captioned matter.

On September 27, 1978, Mr. Smith advised that he will seek a Protective Order under Rule 26(c) Federal Rules of Civil Procedure, that the defendants not answer the attached Document Requests And Interrogatories until such time as Plaintiffs respond to Defendants' Second Set Of Interrogatories And Document Requests. However, he requested that we initiate a file review at this time to ascertain the amount of time and work which will be necessary to respond to the attached interrogatories. This initial review is to be limited to the Federal Bureau of Investigation Headquarters main file on the BPP.

This memorandum requests that the Special Projects Review Unit (SPRU), Records Management Division (RMD), ascertain for LCD the necessary file sections to be reviewed and man hours to be expended to respond to interrogatories. It is requested this information be furnished to LCD by October 13, 1978.

This memorandum further requests that SPRU, RMD, furnish LCD information and documents responsive to the attached discovery request at such time as a response is required. LCD will keep RMD apprised of all developments in this matter.

RECOMMENDATION: 1. That SPRU, RMD, review the attached Document Requests And Interrogatories and furnish LCD with an estimation of the number of file sections which would have to be reviewed and the number of man hours which would have to be expended to respond to the interrogatories and document requests.

APPROVED: \_\_\_\_\_  
Director \_\_\_\_\_  
Assoc. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
Dep. AD Inv. \_\_\_\_\_

Adm. Serv. \_\_\_\_\_  
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Legal Coun. \_\_\_\_\_  
Plan. & Insp. \_\_\_\_\_  
Rec Mgnt. \_\_\_\_\_  
Tech. Servs. \_\_\_\_\_  
Training \_\_\_\_\_  
Public Affs. Off. \_\_\_\_\_

2. That SPRU, RMD, furnish LCD documents and information responsive to the attached Document Request And Interrogatories at such time as a response to the interrogatories and document request is required.

APPROVED: \_\_\_\_\_  
Director \_\_\_\_\_  
Assoc. Dir. \_\_\_\_\_  
Dep. AD Adm. \_\_\_\_\_  
Dep. AD Inv. \_\_\_\_\_

Adm. Serv. \_\_\_\_\_  
Crim. Inv. \_\_\_\_\_  
Ident. \_\_\_\_\_  
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Laboratory \_\_\_\_\_

Legal Coun. \_\_\_\_\_  
Plan. & Insp. \_\_\_\_\_  
Rec Mgnt. \_\_\_\_\_  
Tech. Servs. \_\_\_\_\_  
Training \_\_\_\_\_  
Public Affs. Off. \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

-----  
DAVID DELLINGER, et al.,

Plaintiffs,

v.

Civil Action

No. 1768-69

JOHN N. MITCHELL, et al.,

Defendants.  
-----

DOCUMENT REQUESTS AND  
CROSS-INTERROGATORIES SERVED  
BY PLAINTIFF BLACK PANTHER PARTY

Plaintiff Black Panther Party hereby serves on defendants its Document Requests and Cross-Interrogatories. Since defendants assert a defense of qualified immunity to plaintiff's claims under 18 U.S.C., §2510-20, it is imperative that plaintiff obtain the information upon which defendants base their claim of good faith. In order to avoid any undue surprise and to prepare adequately for the trial of the issues involved in this case, it is necessary that plaintiff obtain the information which defendants utilized in their determination that the Black Panther Party (hereinafter the BPP) were a threat to national security.

1. Did you have any information in your possession at the time the electronic surveillances which related to the BPP were initiated concerning the foreign travel of any officers or members of the BPP?

2. If your response to interrogatory 1 is in the affirmative, please state what information was then in your possession concerning the foreign travel of BPP officers or members to any foreign country, including but not limited to Algeria, Cuba, North Korea, North Vietnam, the Peoples Republic of China, and the Union of Soviet Socialist Republics.

3. Please state what information was then in your

Encls memo Legal Counsel to  
AD, RMD, 10-2-78 DJS:kas



possession concerning the foreign travel of BPP members or officers with respect to the following:

- a) the names of all members of the BPP making each trip and the position of each in the BPP;
- b) the foreign countries and cities visited;
- c) the dates of each foreign visit;
- d) the names of all persons with whom each BPP member met in each foreign country and the positions held by them, if any, in foreign governments (whether or not such positions were held in the government of the country visited), or private organizations (including the name thereof);
- e) the names of the persons or organizations (whether governmental or private) who paid for the transportation and/or expenses of the BPP members;
- f) the purpose for each such visit;
- g) produce for inspection and copying all documents which reflect or relate to such foreign travel, including but not limited to sources of such information and reports of the foreign travel.

4. Was there information in your possession at the time the surveillances which related to the BPP were initiated, concerning any contacts which the BPP maintained with representatives of any foreign governments, or foreign private organizations, exclusive of those set forth in interrogatories 1-3?

5. If your response to interrogatory 4 is in the affirmative, please state with respect to each contact the information then in your possession concerning the following:

- a) the name of the person with whom the contact was had or maintained, the government or private organization of which he was a representative, and the position held by him in that government or organization;
- b) the date of each contact;



c) the purpose of each contact;

d) produce for inspection and copying all documents which refer or relate to each contact with representatives of foreign governments or organizations, including but not limited to telephone bill records, reports, and sources of such information.

6. Was there information in your possession, at the time the electronic surveillances which related to the BPP were initiated, with respect to whether any BPP officers or members were provided with military training in the use of firearms or explosives by representatives of foreign government or private organizations?

7. If your response to interrogatory 6 is in the affirmative, please state for each instance of such training the information then in your possession concerning the following:

a) the names of the BPP officers and members who were provided such training;

b) the names of the persons providing the training, the government or organization of which they were representatives and the positions held by them in that government or organization;

c) the date(s) and location(s) of the training;

d) produce for inspection and copying all documents which refer or relate to such training, including but not limited to reports and sources of the above information.

8. Was there information in your possession, at the time the electronic surveillances which related to the BPP were initiated, with respect to whether any of the officers or members of the BPP had received any monetary contributions or payments of any kind from foreign governments or foreign private organizations?

9. If your response to interrogatory 8 is in the affirmative, please state for each contribution or payment the information then in your possession concerning the following:

a) the name of the person making the contribution

or payment, the government or organization of which he was a representative, and the position held by him in such government or organization;

b) the amount of the contribution or payment and the date it was received;

c) any payment for services or products;

d) produce for inspection and copying all documents or reports which refer or relate to each contribution or payment and the sources of such information.

10. Was there any information in your possession, at the time the electronic surveillances which related to the BPP were initiated, concerning any requests made by the BPP that the United Nations accord it any status in that organization?

11. If your response to interrogatory 10 is in the affirmative, please state what information was then available with respect to the following:

a) the date of the request(s);

b) the results of the request(s);

c) the purpose for the request(s);

d) produce for inspection and copying all documents which refer or relate to any such request(s) and attach reports and sources of such information.

12. Was there any information in your possession, at the time the electronic surveillances which related to the BPP were initiated, concerning any firearms which may have been stored or located at any time in an office or other location owned, leased or otherwise occupied, possessed or used by the BPP, its officers, chapters, branches, affiliates and members?

13. If the answer to interrogatory 13 is in the affirmative, identify by make, model and serial number each such revolver, rifle, shotgun and other firearm or weapon and as to each state what information, if any, was then in your possession with respect to whether it was registered under the statutes or laws of any jurisdiction and, if so, the person or organization by whom it was registered and the registration or permit number.

14. Was there any information in your possession, at the time the electronic surveillances which related to the BPP were initiated, with respect to any explosives which may have been stored or located in an office or other location owned, leased or otherwise occupied, possessed or used by the BPP, its officers, chapters, branches, affiliates and members?

15. If the answer to interrogatory 14 is in the affirmative, set forth each such item of information.

16. With respect to each firearm, weapon or explosive listed in interrogatories 12, 13, 14 and 15, state what information was then in your possession concerning:

a) the address of the office or other location at which it was stored or located;

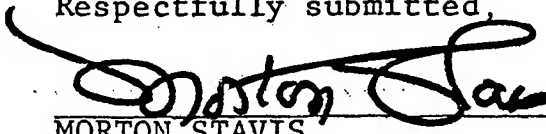
b) the dates upon which it was stored or located at that address;

c) the purpose for the storage or location of the firearm or explosive.

17. Produce for inspection and copying all documents which were in your possession, at the time the electronic surveillances which related to the BPP were initiated, which relate or refer to the storage or location of any firearm, weapon or explosive at an office or other location owned, leased or otherwise occupied, possessed or used by the BPP, its officers, chapters, branches, affiliates and members, and reports or the sources of such information.

18. Produce for inspection and copying all documents, reports, and sources of information which were in your possession, at the time the electronic surveillances which related to the BPP were initiated, concerning statements, suggestions, orders, or policy that members of the BPP or others should kill police officers, judges or other public officials.

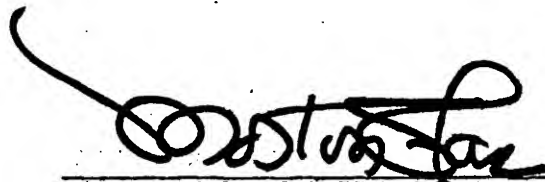
Respectfully submitted,

  
MORTON STAVIS  
Attorney for Plaintiffs  
744 Broad Street  
Newark, N. J. 07102

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 1978, I served a copy of the foregoing Plaintiffs' Response to Defendants' Motion to Compel Answers to Second Set of Interrogatories upon the defendants by serving a copy thereof by mail, postage prepaid, upon the following:

Jonathan B. Smith, Attorney  
Department of Justice  
10th and Constitution Ave., N.W.  
Washington, D. C. 20530



MORTON STAVIS

RECEIVED

OCT 19 1978

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CRIMINAL DIVISION

DAVID DELLINGER, et al., )

Plaintiffs, )

v. )

JOHN N. MITCHELL, et al., )

Defendants. )

CIVIL ACTION/NO. 1768-69

FILED

OCT 18 1978

JAMES F. DAVEY, Clerk

ORDER

Upon consideration of the defendants' motion to compel answers to interrogatories and document requests, the plaintiff's objections to that discovery and opposition to defendants' motion, and the record in this case, it is hereby, this 17<sup>th</sup> day October, 1978,

ORDERED that the defendants' motion should be, and it hereby is, granted; and it is further

ORDERED that plaintiff Black Panther Party shall answer each of the interrogatories and document requests filed by defendants on April 6, 1978, within <sup>30 days</sup> ~~10~~ days of the date of the entry of this Order.

*[Signature]*  
UNITED STATES DISTRICT JUDGE

EX-113

REC-89

62-112989-359

1 cc for Rm 7838

6 OCT 25 1978

ENCLOSURE

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ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 1-27-82 BY [signature]

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF COLUMBIA

DAVID T. DELLINGER, et al.,     )  
                                  )  
                          Plaintiffs,     )  
                                  )  
                          v.             )  
                                  )  
JOHN N. MITCHELL, et al.,     )  
                                  )  
                          Defendants.     )

CIVIL ACTION NO.  
1768-69

FILED

OCT 18 1978

ORDER

JAMES F. DAVEY, Clerk

Upon consideration of the motion by the defendants for an Order dismissing the claims of plaintiffs Student Non-Violent Coordinating Committee, Congress of Racial Equality, American Servicemen's Union, National Mobilization Committee to End the War in Vietnam and New York Resistance, and Abbott Hoffman, and granting summary judgment for defendants against plaintiffs the Southern Conference Educational Fund, Catholic Peace Fellowship and War Resisters League, the memorandum of points and authorities in support thereof, and the pleadings, affidavits, answers to interrogatories, and replies to requests for admissions on file herein; and finding that plaintiff Hoffman has disregarded Orders of this Court requiring him to respond to interrogatories and has provided neither reasonable explanation nor a showing of inability to produce the information, it is by the Court this 17<sup>th</sup> day of October, 1978;

ORDERED that defendants' motion to dismiss and for summary judgment should be, and is hereby granted; and it is

62-112989-359  
ENCLOSURE

FURTHER ORDERED that the claims of plaintiffs Student Non-Violent Coordinating Committee, Congress of Racial Equality, American Servicemen's Union, National Mobilization Committee to End the War in Vietnam, New York Resistance and Abbott Hoffman should be, and they hereby are, dismissed; and it is

FURTHER ORDERED that judgment against plaintiffs the Southern Conference Educational Fund, Catholic Peace Fellowship and War Resisters League should be, and hereby is, entered in favor of the defendants.

  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al.,

~~FEDERAL GOVERNMENT~~

Plaintiffs,

v.

Civil Action No. 1768-69

JOHN N. MITCHELL, et al.,

Defendants.

2/9/93 (Precedent) 3/5/82  
ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 1-5-82 BY [signature]

MOTION TO FIX SEPTEMBER 14 AS THE  
DATE BY WHICH PLAINTIFFS SHALL  
RESPOND TO DEFENDANTS' MOTION TO  
COMPEL ANSWERS TO DEFENDANTS'  
SECOND SET OF INTERROGATORIES, ETC.,  
TO PLAINTIFF BLACK PANTHER PARTY

The plaintiffs, by their undersigned attorney, respectfully move this Court for an Order fixing September 14, 1978, as the date by which plaintiffs shall respond to Defendants' Motion to Compel Answers to Defendants' Second Set of Interrogatories and Document Requests to Plaintiff Black Panther Party.

In support of this motion, plaintiffs rely on the annexed affidavit of Morton Stavis.

Respectfully submitted,

[Signature of Morton Stavis]

MORTON STAVIS  
Attorney for Plaintiffs  
744 Broad Street  
Newark, N. J. 07102  
(201) 622-3789



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DAVID DELLINGER, et al.,  
Plaintiffs,

v.

Civil Action No. 1768-69

JOHN N. MITCHELL, et al.,  
Defendants.

AFFIDAVIT

STATE OF NEW JERSEY )  
 ) ss.:  
COUNTY OF E S S E X )

Morton Stavis, being duly sworn according to law, upon his oath deposes and says:

1. Under date of July 28, 1978, defendants filed their Motion to Compel Answers to Defendants' Second Set of Interrogatories and Document Requests to Plaintiff the Black Panther Party.

2. Under the rules of the Court, plaintiffs would have until August 14, 1978, to respond thereto.

3. I am unable to make the response within the time set by the rules for the following two reasons:

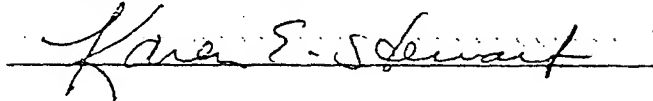
a) The problems involved in this motion concern the Black Panther Party, which I do not represent excepting in respect to this particular litigation, and I am required to be in contact with counsel for the Black Panther Party in California. Promptly upon receipt of the motion I forwarded a copy of the papers to counsel in California. While I am in touch with him, I have not as yet received either directions or material from him. Plainly, the issues involved in this motion raise serious questions of policy as to which the Black Panther Party and its general counsel must be closely consulted.

b) Regardless of the need for consultation, the issues which are presented by the motion require careful research.

and methodical responses. On my return from my vacation I found a massive amount of work facing me and it will simply not be possible for me to file a credible response without a modest extension of time.

  
MORTON STAVIS

Sworn to and subscribed  
before me this 10th day  
of August, 1978.

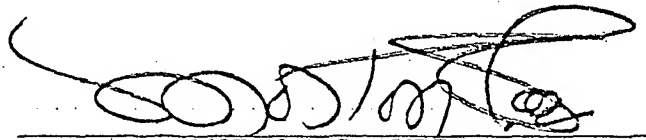


KAREN E. STEWART  
A Notary Public of New Jersey  
My Commission Expires Feb. 10, 1981

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing motion and affidavit upon the defendants by serving a copy thereof by mail, postage prepaid, upon the following:

Jonathan B. Smith, Attorney  
Department of Justice  
10th and Constitution Ave., N.W.  
Washington, D. C. 20530.



MORTON STAVIS

Dated: August 11, 1978.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al.,  
Plaintiffs,

v.

JOHN N. MITCHELL, et al.,  
Defendants.

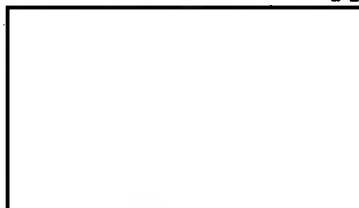
Civil Action No. 1768-69  
**ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 5-8-82 BY 4254/JP**

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO  
GRANT PLAINTIFFS UNTIL SEPTEMBER 6 TO FILE  
THEIR RESPONSE TO DEFENDANTS' REPLY TO PLAINTIFFS'  
RESPONSE TO MOTION TO DISMISS AND FOR SUMMARY  
JUDGMENT AS TO CERTAIN PLAINTIFFS

On April 6, 1978, defendants served and filed a motion seeking, inter alia, summary judgment against plaintiff Southern Conference Educational Fund (SCEF). That motion was supported by affidavits denying electronic surveillance of SCEF by defendants or their agents. In opposition, served on June 20, 1978, plaintiff SCEF produced no evidence to indicate that such electronic surveillance took place, merely attacking the sufficiency of the affidavits in support of that motion. A reply to that opposition, including a further affidavit, was served on July 19, 1978.

As was noted in the memoranda supporting defendants' motion, there is no evidence of record to support plaintiff SCEF's allegation that it was subjected to electronic surveillance by the defendants or their agents. In its answer to an interrogatory requesting that it state all facts upon which that allegation was based, the plaintiff responded only that because the Government had conducted massive electronic surveillance of groups which opposed Government policy, SCEF must have been subjected to electronic surveillance.

Thus, nine years after the initiation of this action, plaintiff SCEF seeks additional time in which to offer evidence supporting its claim. It would appear that the



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gathering of such evidence would have properly begun prior to the full briefing of defendants' motion for summary judgment.

The defendants submit that if the plaintiff's motion is granted, they should have a period of 20 days in which to fill a reply to any submission that is made.

Respectfully submitted,

Barbara Allen Babcock / om

BARBARA ALLEN BABCOCK  
Assistant Attorney General

Barbara B. O'Malley

BARBARA B. O'MALLEY

Jonathan B. Smith

JONATHAN B. SMITH

Attorneys, Department of Justice  
Washington, D.C. 20530  
Telephone: (202) 739-3336

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing Defendants' Response to Plaintiffs' Motion to Grant Plaintiffs Until September 6 to File Their Response to Defendants' Reply to Plaintiffs' Response to Motion to Dismiss and for Summary Judgment as to Certain Plaintiffs, upon the plaintiffs by serving a copy thereof by mail, postage prepaid, upon the following counsel of record:

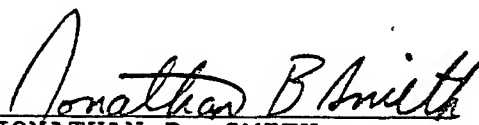
Morton Stavis, Esquire  
744 Broad Street  
Newark, New Jersey 07102

Rhonda Copelon, Esquire  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003

Arthur Kinoy, Esquire  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003

Jack D. Novik, Esquire  
American Civil Liberties  
Union Foundation  
22 E. 40th Street  
New York, New York 10016

August 23, 1978  
DATE

  
JONATHAN B. SMITH  
Attorney, Department of Justice  
Washington, D.C. 20530  
Telephone: (202) 739-3336

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FEDERAL GOVERNMENT

DAVID DELLINGER, et al.,

Plaintiffs,

v.

JOHN N. MITCHELL, et al.,

Defendants.

Civil Action No. 1768-69

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DEFENDANTS' REPLY TO PLAINTIFFS' RESPONSE  
TO MOTION TO DISMISS AND FOR SUMMARY  
JUDGMENT AS TO CERTAIN PLAINTIFFS

STATEMENT

On April 6, 1978, defendants filed a three part motion to dismiss and for summary judgment. This memorandum is filed in reply to the plaintiffs' opposition to entry of judgment against plaintiffs Southern Conference Educational Fund (SCEF), Catholic Peace Fellowship (CPF) and War Resisters League (WRL) and to the dismissal of plaintiff Abbott Hoffman.

ARGUMENT

1. Summary judgment against SCEF, CPF and WRL should be entered.

Those organizations resist summary judgment generally on two grounds. They argue initially that the supporting affidavits are insufficient to demonstrate that no electronic surveillance of those organizations was conducted by the Federal Bureau of Investigation (FBI). Secondly, they contend that the failure to include the officers of those organizations in the denial is fatal to the motion. As will be demonstrated, however, neither of those grounds precludes summary judgment at this juncture in this case.

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COUNSEL

The Affidavits of Joseph P. Smith, III, C. Donald Baxter, and Edmund V. Armento (filed as Exhibits 2-4 in support of defendants' motion for summary judgment, on April 6, 1978) declare that a careful and diligent search of the electronic surveillance (Elsur) indices maintained by the New York, New Orleans and Louisville Field Offices, contain no record of electronic surveillance of SCEF, CPF and WRL at the addresses and telephone numbers therein listed. Those addresses and phone numbers are those which the plaintiff organizations themselves provided as locations and phones in which they had an interest.<sup>\*/</sup> Each affidavit, moreover, states that had the organizations been the subject of the electronic surveillance at those addresses or on those numbers, the indices would have contained a record of that surveillance.

Plaintiffs attack the affidavits initially because there is no mention of a search of the Elsur index maintained at FBI Headquarters in Washington, D.C. However, as even the affidavit of Morton Stavis<sup>\*\*/</sup> asserts, the Headquarters Elsur index does not contain the names of all organizations which have been the subject of FBI electronic surveillances. Rather it is an index of individuals who have been overheard on electronic surveillances conducted by the FBI since January, 1960.<sup>\*\*\*/</sup> Nevertheless, the FBI has conducted an index check of the Elsur index at Headquarters and has found no record of electronic surveillance of SCEF, CPF and WRL at the addresses and phone numbers that were provided by those plaintiffs.

Litzenberg Affidavit, ¶ 8.

<sup>\*/</sup> Those addresses and telephone numbers were set forth by the plaintiffs in answer to interrogatories requesting, inter alia, the location of all real property in which each organization has had an interest since January 1, 1965 and all telephone numbers subscribed to or used by the organizations in that period.

<sup>\*\*/</sup> That affidavit was filed in opposition to defendant's motion for summary judgment on June 20, 1978.

<sup>\*\*\*/</sup> See the Affidavit of George Litzenberg, Jr., filed herewith as Exhibit 6, ¶6.



Furthermore, the affidavit of George Litzenberg, Jr., explains the misconception contained in paragraphs 8 and 9 of the Affidavit of Morton Stavis, i.e., that the "information in the field offices is the same as that in the central office." Although the Headquarters Elsur index contains only the names of individuals overheard, the Field Office indices are more comprehensive and may indeed contain the names of organizations which have been the subject of electronic surveillance. Thus, the Litzenberg affidavit supports the affidavits filed by Field Office personnel stating that electronic surveillances of SCEF, CPF and WRL would have been recorded in the Field Office indices had such surveillances occurred.

Plaintiffs also assert that, because declarations concerning electronic surveillance overhears of individuals have been inaccurate in the past, the affidavits filed in this case ought not to be taken at face value. However, as is also explained in the Litzenberg affidavit, the problems and inaccuracies in the Elsur indices with respect to a listing of every overhear of an individual, on all surveillances conducted by the FBI, are not encountered when the indices are searched to determine whether an organization was the subject of an electronic surveillance. Although it is difficult to determine the dates and locations of all overhears of an individual on electronic surveillances, it is much less problematic to determine whether a particular organization was the subject of electronic surveillance at its office(s) or over its telephone(s). Thus, the problems encountered by the FBI in Kinoy v. Mitchell, Civil Action No. 70 Civ. 5698 (RJW) (S.D.N.Y.), as set forth in the affidavit of Morton Stavis are immaterial and cannot be employed to demonstrate the existence of a genuine issue of fact in this instance.

The plaintiffs further resist summary judgment because the defendants' denial that electronic surveillance of SCEF, CPR and WRL took place, did not include the officers of these organizations. The officers, however, are not plaintiffs in this case and their interests cannot be represented by the organizations.

On August 5, 1969, shortly after this suit was filed, the plaintiffs served interrogatories seeking information as to electronic surveillance by the FBI of the plaintiffs and "their officers, agents, members or employees." Following the vacation of the Order staying proceedings in this case, the plaintiffs filed a motion to compel answers to those interrogatories, as amended, on August 13, 1973. The reference to "officers, agents, members and employees" was deleted in the Amended Interrogatories. Moreover, counsel stated in the brief in support of their motion to compel, "... it must be noted that the litigation is not being pursued as to 'officers, agents, members and employees' of plaintiff organizations." [Emphasis supplied].<sup>\*/</sup> Thus it is abundantly clear that the plaintiff organizations, by their own choice, have not pursued this litigation with respect to electronic surveillance of their officers, but have been concerned only with electronic surveillance of which the organizations, as organizations, were the subject.

Although plaintiffs SCEF, CPF and WRL have opposed the defendants' motion for summary judgment by attacking the sufficiency of the denial that electronic surveillance occurred, they have failed to come forward with any fact to demonstrate that such electronic surveillance occurred. Paragraph 13 of the Stavis affidavit states that since it has been revealed that the FBI conducted electronic surveillance of organizations which opposed government policy, these organizations must have been included.

---

<sup>\*/</sup> See page 7 of Brief In Support of Plaintiffs' Motion For An Order Compelling Defendants To Answer Plaintiffs' First Set Of Interrogatories And To Supply Requests For Admission, filed herein on August 13, 1973.

The plaintiffs are, in reality, merely reiterating the conclusory allegations of the Complaint in an attempt to demonstrate the existence of a genuine issue of fact. That, however, is not permitted by Rule 56(e), Federal Rules of Civil Procedure, which states in part:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him. [Emphasis supplied.]

As the Supreme Court, in First National Bank v. Cities Service, 391 U.S. 253, 289 (1968), held: "[w]hat Rule 56(e) does make clear is that a party cannot rest on the allegations in his complaint in opposition to a properly supported summary judgment motion made against him." The party opposing a motion for summary judgment must respond by affidavits, or otherwise, setting forth specific facts showing genuine issues. Bloomgarden v. Coyer, 479 F.2d 201 (D.C. Cir. 1973); Chapman v. Rudd Paint and Varnish Company, 409 F.2d 635 (9th Cir. 1969).

Organizations are protected by the First and Fourth Amendments (see, e.g., NAACP v. Button, 371 U.S. 415 (1963); Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920)) and by 18 U.S.C. §2520. Thus, when an organization has a proprietary interest in premises searched or objects seized, the Fourth Amendment is available to protect the organization rights. Silverthorne Lumber Co., supra; Go-Bart Company v. Habig, 474 F.2d 57, 62 (7th Cir. 1973). Similarly, when an organization's First Amendment rights are infringed, it may sue to vindicate those rights. NAACP v. Button, supra; National Student Association v. Hershey, 412 F.2d 1103 (D.C. Cir. 1969). An organization cannot, however, claim that its rights are coincident and congruent with those of the individuals associated with it. It does not have a

stake in every search conducted of its officers' or members' premises. The constitutional rights of those members are personal and cannot be vicariously asserted by the organization. Alderman v. United States, 394 U.S. 165, 174 (1969); Simmons v. United States, 390 U.S. 377 (1968).

In this case, the plaintiff organizations have alleged that they were subjects of FBI electronic surveillance. They have not chosen to proceed on behalf of their officers. They have provided, in response to interrogatories, the locations of premises and telephones in which the organizations have had a proprietary interest, and Elsur index searches have confirmed that those premises and telephones were never the target of FBI electronic surveillance. Plaintiffs SCEF, CPF and WRL have come forward with no facts to demonstrate that their offices or phones were subjected to electronic surveillance by the FBI.

Under these circumstances, a lengthy review of FBI investigative files and an index search to determine whether conversations of any officers of SCEF, CPF and WRL were monitored by the FBI are inappropriate. There is simply no evidence on the record to challenge defendants' denial of electronic surveillance of those organizations' premises or phones. Moreover, the fact that one of their officer's conversations may have been monitored over an electronic surveillance directed at an individual or organization other than SCEF, CPF or WRL simply does not give those organizations standing to maintain this case. Cf., NAACP v. Alabama, 357 U.S. 449, 459 (1958), where the association was allowed to assert its members' right to free association because "[t]o require that it be claimed by the members themselves would result in nullification of the right at the

very moment of its assertion." In this case such impediment blocks the way of the officers of SCEF, CPF and WRL. If they believe that their conversations have been overheard by the FBI on electronic surveillances, there is nothing to prevent their assertion of their constitutional and statutory rights. Thus, defendants are entitled to judgement as a matter of law against plaintiffs SCEF, CPF and WRL.

2. Plaintiff Abbott Hoffman's claim should be dismissed.

The argument advanced by the defendants in their moving brief will not be repeated here. The cases cited there clearly support a dismissal at this time. To allow a plaintiff to refuse to comply with discovery orders until the case is ready for trial would serve to frustrate the discovery process and delay the preparation of this case for trial.

CONCLUSION

For these reasons, the defendants motion to dismiss and for summary judgment should be granted in its entirety.

Respectfully submitted,

Barbara Allen Babcock /om  
BARBARA ALLEN BABCOCK  
Assistant Attorney General

Barbara B. O'Malley  
BARBARA B. O'MALLEY

Jonathan B. Smith  
JONATHAN B. SMITH

Attorneys, Department of Justice  
10th & Constitution Ave., N.W.  
Washington, D.C. 20530  
Telephone: (202) 739-3336

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing Defendants' Reply to Plaintiffs' Response to Motion to Dismiss and for Summary Judgment as to Certain Plaintiffs and supporting affidavit, upon the plaintiffs by serving a copy thereof by mail, postage prepaid, upon the following counsel of record:

Morton Stavis, Esquire  
744 Broad Street  
Newark, New Jersey 07102

Rhonda Copelon, Esquire  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003

Arthur Kinoy, Esquire  
c/o Center for Constitutional Rights  
853 Broadway  
New York, New York 10003

Jack D. Novik, Esquire  
American Civil Liberties  
Union Foundation  
22 E. 40th Street  
New York, New York 10016

July 19, 1978  
DATE

Jonathan B. Smith  
JONATHAN B. SMITH  
Attorney, Department of Justice  
Washington, D.C. 20530  
Telephone: (202)739-3336

ENCLOSURE

62-112989-

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID DELLINGER, et al.,  
Plaintiffs,  
v.  
JOHN N. MITCHELL, et al.,  
Defendants.

Civil Action No. 1768-69

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 2/9/93 BY 1048 DCM/SP

AFFIDAVIT OF GEORGE LITZENBERG, JR.

George Litzenberg, Jr., deposes and states:

1. I am a Special Agent of the Federal Bureau of Investigation (FBI), currently assigned to Headquarters at Washington, D.C. I am the custodian of the electronic surveillance (Elsur) index maintained at FBI Headquarters. I am familiar with the Headquarters index and I am generally familiar with the Elsur indices maintained by the FBI Field Offices.

2. I have read and am familiar with the Affidavit executed by Morton Stavis on June 20, 1978, and filed in this case.

3. The Headquarters Elsur Index is a compilation of 3x5 inch index cards prepared by the Field Offices and cards prepared at Headquarters related to Department of Justice and Freedom of Information/Privacy Act requests concerning electronic surveillance. The index contains the name of each individual overheard on electronic surveillances conducted by the FBI, the symbol number assigned to that electronic surveillance (if one was assigned), the date of the initial overheard of that individual, and the Field Office conducting the monitoring. Subsequent overhears of an individual on each surveillance would not generally be included in the Headquarters Elsur index. This index was compiled pursuant to a communication from the Director to selected Field Offices, dated October 5, 1966, and goes back to January 1,

1960.

4. The Headquarters index, since it was created in October, 1966, contains only those names located in logs or records of conversations existing in October, 1966, for the period of January, 1960 to October, 1966. It would not be all-inclusive of everyone monitored between those dates, since certain of the records obtained between those dates were destroyed prior to October, 1966. The Elsur index card, except in rare instances, contains no identifying data other than the name of a person monitored. There are instances in which a voice is never identified by name and in those instances the index would contain no record of the intercept. It must be recognized that in all clerical functions there is a possibility for clerical error and in regards to the Headquarters Elsur index, misfilings, transposed letters in a name and incorrect spelling of a phonetic name may occur.

5. Elsur index checks, in the usual situation, involve searching for an individual's name in the Headquarters index. If that name is located in the Headquarters index, a further search of the index of each Field Office referred to on the Headquarter card(s) is conducted in order to obtain complete data on each overhear and to effect an identification of the person overheard where possible.

6. The Headquarter's Elsur index normally includes only persons, places and telephones monitored by the FBI on electronic surveillances. The indexing procedures followed in the past did ~~not require retrievability of organizations by name~~, although in some isolated instances organizations were indexed. The Field Office Elsur indices contain a more complete inventory of the totality of the overhears of a person.

7. The F.B.I. Headquarters does not prepare "overhear" cards, for persons monitored. The Field Offices prepare those cards. When they are prepared, two are made, one being retained in the Field Office and one being sent to FBI



Headquarters for inclusion in the Headquarters Elsur index. However, the Field Office Elsur indices are not (as is implied by the affidavit of Morton Stavis at page 3, paragraph 8) "the same as" that maintained at Headquarters. The Field Office indices are more comprehensive and would generally reflect the subject, or target, of each electronic surveillance conducted by the Field Office since January 1, 1960, when that subject was an individual and, in some offices, an organization. Since the Field Office indices are more comprehensive, an index check in the Field Offices obviates the need for a Headquarters index check.

3. In light of the opposition to the motion for summary judgment against plaintiffs, The Southern Conference Education Fund, Catholic Peace Fellowship and War Resisters League, I have carefully and diligently searched the Headquarters Elsur index with reference to those organizations. As a result of my search of the Headquarters Elsur index, I found no record of electronic surveillance of those organizations at the following addresses and telephone numbers:

Southern Conference Educational Fund

1. 822 Peridido Street  
Suite 408  
New Orleans, Louisiana
2. 3210 West Broadway (502)778-3348  
Louisville, Kentucky 40211 (502)778-3349
3. 3208 West Broadway  
Louisville, Kentucky 40211

Catholic Peace Fellowship

1. 5 Beekman Street (212)W04-8367  
New York, New York
2. 339 Lafayette Street (212)673-8990  
New York, New York
3. 524 Upper Broadway (212)L08-8200  
Nyack, New York (914)EL8-4601

War Resisters League

1. 5 Beekman Street (212)L07-4592  
New York, New York (212)L07-4593  
(212)L07-4594

2. 339 Lafayette Street  
New York, New York

(212) 228-0450  
(212) 228-0451  
(212) 228-0452

I declare under penalty of perjury that the foregoing is  
true and correct.

  
GEORGE LITZENBERG, JR.

Executed on July 18, 1978.